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THE ROLE OF THE CONSTITUTION IN THE EVOLUTION OF
THE POLISH COMMUNIST SYSTEM

by

Tomasz Inglot

A Thesis Submitted to the Faculty of the Graduate School
of Loyola University of Chicago in Partial Fulfillment
of the Requirements for the Degree of

Master of Arts

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CHAPTER I

INTRODUCTION

Poland is the largest and strategically crucial ally of the USSR in East Europe. It is also, during the present time least politically and economically stable country of the bloc. In addition to being a part of an ideologically cohesive (however not always uniform) alliance of communist nations, Poland has developed its own, independent and unique characteristics which set its political and socio-economic structure aside from the rest of the bloc. Despite strong tendencies for generally similar designs in social transformation and constitutional regulation in all East European countries, the reality of indigenous differences among them has been hard to hide behind the rigid proclamations of official doctrines and the introduction of common "socialist" law.

Poland's special position in the bloc is due not only to strategic, geographical or even immediate political influences. It results from powerful internal factors, among them the deeply ingrained traditions of nationalism, respect for civil liberties and a long history of struggle for independence. These and other indigenous characteristics became evident in the pattern of Polish state organization, including the communist period and can be traced through an analysis of modern constitutions of Poland.

The period of independent political development, started in 1918, was interrupted when the country became the first battlefield of World War II. During 1918-1939 Poland belonged to a group of European nations which underwent a deep transformation of their political systems. Most of East Europe failed to preserve unstable parliamentary governments created after the conclusion of World War I. In Poland, a new concept of state-centered authoritarianism, during the 1930s formed a basis for the anti-parliamentarian regime that fell in September 1939.

The communist takeover, completed during 1944-47, did not result in a complete condemnation of the Polish past. While aiming at the elimination of the bourgeois elements, associated with the state structures of pre-war Poland the new regime attempted to incorporate some national and democratic traditions into the new system, giving them a new "true" and ideologically determined meaning. Even if they managed to transform the whole political and socio-economic structure as well as redefine the role of state law, the communists had to come to terms with the Polish reality.

In the new charter the regime set out to deliver promises of a new type of democracy. This political system became popularly associated not with the ideas of communism, but with the promise of improvements in living conditions that no other political or economic structure in independent Poland has been capable of delivering. This turns out to be

the main reason why the communists are being held accountable in social opinion, not only for the forcibly imposed foreign political organization, but also for the failure to fulfill the program they set out to realize in Poland. The social and political transformation in the country very soon took on a unique national form which varies greatly from the pattern envisioned by the Marxist-Leninist doctrine.

The 1952 Constitution of the Polish People's Republic (Polska Rzeczpospolita Ludowa)¹, defining the political, social and economic structure of the state, was passed during a period when the uniform Stalinist model of "socialism" had been already accepted throughout the Soviet bloc. In the communist political system a constitution ceases to be only a legal document proscribing the rules of state organization and establishing the norms for the relationship between the citizens and the authorities. Such document is not limited to a declaration of supreme legal norms, but becomes "a reflection of the existing reality [as perceived by the rulers] and a means for further transformation of society" (Brzezinski, 1968:77).

According to Marxist interpretation the socialist constitution has three basic functions: 1) legal, as the basic law, 2) programmatic as a definition of goals for socialist development; and 3) educational, as a general directive for socialization (Sokolewicz, 1978: 56-58). The period of constitutional development in post-World War II

poland has been characterized by constant struggle between the party ideology on one hand, and the reality of political and socio-economic change on the other. The need to achieve certain proclaimed goals of "socialist construction" often collided with the necessity to acknowledge specific national conditions. The understanding of these factors could help explain the shifts in the Polish domestic policies which influence constitutional interpretation and determine the amendments in the text itself.

The role of the present Polish Constitution is a function of both the Marxist-Leninist ideology and the policies of the Communist party which aim at transforming the society and securing power. While the ideology finds its reflection in the party program, it often stands in contradiction with reality, promising more than can be achieved. The disappointing results may weaken the legitimacy of the regime, but since the party claims monopoly on the interpretation of socio-economic development, failure could be attributed to the methods only. It cannot influence the goals, whose validity remain beyond challenge. They form a core of the constitutional order.

The situation in which the legal function of the constitution coexists with its programmatic function creates an imbalance between the two. The goal-oriented activity of the state in practice takes precedent over pure rule application. Thus in the communist countries as a rule the

"legitimacy of task-achievement" overcomes the "legitimacy of rule-compliance" (Rigby, 1982:12). In trying to justify their hold on power a communist party considers historical materialism as a doctrine superior to bourgeois pluralist democracy. The text of a constitution as a normative statement in communist countries is designed for a society which allegedly has already been transformed, at least partially. The most important remnants of the bourgeois state are proclaimed to have been eliminated. However, as long as any socio-economic contradictions, reminiscent of the former structure exist, a struggle for further change becomes a priority of the regime. It can be constitutionally justified in the form of the programmatic provisions in the basic law. In the ideological context the legal norms become functional only under the specific conditions of the socially unified "socialist state". Hence, the constitutional development becomes a dynamic process with the party being an ultimate arbiter of the interpretation, practical application and reevaluation of the law.

The political and economic crisis of the 1980s in Poland presents a new complex dilemma for the communist rulers of that country. The uniqueness of the Polish situation is mainly due to the fact that the so-called "socialist renewal" there has its real origins not in the reform from above or from abroad, such as the influence of Gorbachev's policies, but in the virtual collapse of the

party authority during 1980/81, under popular pressure. In the atmosphere of economic reforms and certain institutional changes in the government structure it may become difficult to distinguish between the apparent desire for "liberalization" and a tactical maneuver by the party, not the first one in Polish post-war history, to regain full control over the society.

The weakness of the Polish communists lies in the fact that despite their attempts to present the reforms as their own desire for greater democratization they can no longer successfully deny that the society was able, for a limited time, to seize the political initiative from the party. The constitutional reforms, both those already in effect since 1982 and the ones expected to follow, provide evidence of the regime's efforts to regain political ground and institutionalize the major aspects of its program of "socialist renewal". (Appendix 4) At the same time the ideological factor has almost completely lost its significance in handling yet another phase of the legitimacy crisis in Poland. The authorities themselves openly admit that they are no longer overwhelmingly popular in the nation². In this context a search for a new legal significance of the reformed basic law becomes a crucial task for the authorities for whom the only credible explanation of the party rule remains in the geopolitical sphere, thus leaving no alternative to the present system.

The role of the constitution in Poland becomes greater during periods of political and economic turmoil. The party attempts to use it as a justification of its continuous rule whereas the awakened opposition, frequently focusing on the national traditions of sovereign constitutional government seeks more legal protection for citizens rights. The latter often means trying to interpret the basic law as an independent guarantee which is supposed to prevent political oppression. The more the text of the constitution becomes influenced by the ever-changing political programs of the party the less significant the legal meaning of its provisions becomes. This fact, in conjunction with the goal-oriented function of the document, helps reduce the role of the constitution to the mere description of the state and society which puts too much emphasis on the abstract and ideal realization of the ideological doctrine. In effect, the currently valid norms and regulations assume only a temporary character.

When the party enters a period of crisis and it tries to reassess the legal basis of its rule, it often finds a solution in expanding or modifying the measures of political control. The constitution becomes a focus of intra-party and general public discussion, where consultations with the non-Communist elements become permissible. The constitution has been used by the party to play a stabilizing role in the overall process of systemic evolution in Poland. The East

European societies have been characterized as the ones undergoing a "continuous legitimation crisis" (Heller, 1982). In the Polish case, and most likely in other communist countries of the bloc as well, the emphasis on the legal role of the Constitution becomes most pronounced when the crisis becomes more intense. The insistence on the programmatic and also educational functions usually signifies a beginning of a period of post-reform stabilization when the Communist party regains confidence in its power.

The ability of a particular East European country to choose its own path of socialist development, (different from the Soviet example in many details, even if nominally identical in fundamental systemic principles and goals), since the late 1950s has allowed the Polish regime more freedom in seeking indigenous institutional solutions for state organization. The symbolic significance of Polish national identity and independence has been acknowledged not only by many Communists in the first post-war government but most importantly by the Soviets themselves who initially regarded an open imposition of a communist or "socialist" regime as politically unwise (Polonsky & Drukier, 1980:15-23). Instead, the first post-war regime was formally a coalition of many parties and groups which were bound by their faithfulness to the ideals of "democracy", Polish patriotism and finally a declaration of friendliness toward the USSR.

Since their coming to power in 1944 the Polish communists have tried to utilize national symbolism by incorporating certain traditional institutions, like for example the Sejm, into the new state structure thus claiming the continuation of Polish history at a new, higher stage of development. Meanwhile however, the party never gave up an idea to build their own foundation of traditional legitimacy, not unlike the one which, as some scholars claim, does exist in the Soviet Union. (Heller, 1982:58). Often during periods of intensified political crisis the official rehabilitation of the previously concealed periods of the national past and the new more open debate over the controversies, including those hidden from the public to date, lead to the acceptance of necessary institutional reforms. Previously rejected state organs such as the Supreme Chamber of Control, the Tribunal of State, the Constitutional Tribunal and, most recently a proposal to reestablish the two-chamber parliament³, are recreated within the framework of the new system.

The Polish communists themselves have acknowledged their indebtedness to at least some general principles of the 1921 Constitution, the first basic law of independent Poland after 120 years of foreign rule. The presence of both democratic and authoritarian tendencies in the Polish modern constitutional history provide a revealing illustration of a nation whose state organization has always been extremely

unstable. The major conflict between a desire to build a strong independent state in the very vulnerable part of Europe on one hand, and the traditional respect for political liberties, individual freedoms, and pluralism on the other also found its reflection in the country's modern constitutions. The contemporary communist rulers of Poland are apparently aware of this legacy.⁴ During the last 44 years of their rule they have not managed to diminish its significance. The calls for Poland's return to the Western model of a democratic, pluralist society which become more and more pronounced in the atmosphere of continuous political and economic failures of the present system, can base their legitimacy on the country's independent political past, interrupted by World War II and terminated by the Soviet-backed communist take-over.

NOTES

1. The Polish communists adopted the term "Polska Rzeczpospolita Ludowa" ("People's Poland") from the program of the pre-war peasant progressive movements. See Cekalski and Litynski, 1987.

"Rzeczpospolita" is an ancient Polish term describing an independent Polish state. It can be translated into English either as the "Commonwealth" or the "Republic." Another Polish word for Republic - Republika, is also used to describe member republics of the Soviet Union. In general, it usually refers to the form of government. In the Polish constitutional contest it appears that the term "Rzeczpospolita" was chosen to indicate the sovereign nature of the new Polish state.

2. See Rakowski, M. "Tetno zycia politycznego bije za slabo" in Polityka No 52, 1987.
3. See Adam Lopatka, "Opinie" in Polityka, No 50 1987.
4. See Jaruzelski's speeches and interviews in Jaruzelski (1985) for the evidence of patriotic rhetoric.

CHAPTER II

THE AUTHORITARIAN AND DEMOCRATIC TENDENCIES IN THE CONSTITUTION OF INDEPENDENT POLAND 1918-1939

The creation of the Polish state became an international issue during World War I largely due to the famous Wilson's "fourteen points". The need for an independent Poland in Europe was finally acknowledged by the Entente at the Versailles conference in 1919. Meanwhile, the political developments in Poland itself gained their own momentum bringing to the fore fierce ideological disputes which had been simmering already for many years during the period of foreign domination. At this time crucial external factors combined with the internal circumstances, produced a final constitutional compromise in the early 1920s.

Among the outside influences the most important was the geographical location of Poland between Russia and Germany. The armed conflicts and territorial disputes with these major powers and other smaller nations (Czechoslovakia, Ukraine, Lithuania) were endemic until 1923. These included the Polish-Soviet war of 1920-21 and the prolonged conflict with Germany over Silesia. The economic instability of Europe also contributed to the precarious position of Poland.

The internal situation, on the other hand, was complicated by a fragmented party system and difficult ethnic

problems. Two major antagonistic political programs which had been formulated in the course of a century long struggle for independence emerged during that time. One was proposed by the National Democrats, the other by the Socialists - mainly by the Polish Socialist Party (Polska Partia Socjalistyczna-PPS). Aside from this major conflict the overall political spectrum was by no means clear-cut. Deep factional divisions precluded any united action on the left. In the center, a strong peasant political movement emerged and on the right the monarchists and other conservative elements were still very much alive. The political debate was greatly influenced by the old 19th century ideological cleavages.

Popular identification with the new state and a chance for mass participation in the political process were severely restrained by the profound differences among the three parts of Poland which for over 120 years had remained under diverse foreign political and cultural influences. The existence of large ethnic minorities within the state boundaries created an additional challenge for the Polish political leaders. Poland could hardly afford to ignore the rights of various nationalities on its territory since the country was bound by the Versailles treaty provision emphasizing the necessity for a peaceful and just solution to the minority problem. At that time, in spite of the strong nationalist tendencies, the political reasons such as the need for an alliance with the

western democracies and the domestic federalist plans, precluded any decisive authoritarian solution in this case.

Before the full implementation of the new Constitution the functioning of the state was based on a set of temporary rules called "Little Constitution". Since the parliamentary representation of the nation had already been elected in 1919 "most of the time the rules of a parliamentary government according to the western models were used in practice" (Peretiatkowicz, 1923:3). The Little Constitution reflected a desire for national unity and consensus on part of the major participants in the political process. The mobilization of the masses by the parties for any specific ideological program was not easy to achieve. The main obstacle was the low level of political awareness and profound regional differences (with each party maintaining its stronghold in a specific region). The outside threat to the new state which culminated in the course of the Polish-Soviet war served both the purpose of consolidation within the political elite and mobilized the population for the national cause (Watt, 1979:Chapter 6; Polonsky, 1972:99).

The temporary Head of State, Marshal Josef Pilsudski was given special executive powers by the Little Constitution. After his victory over the Russians in 1920 his personal prestige and authority in the nation greatly increased. Nevertheless, since 1919 he had been always

formally responsible to the parliament (Sejm) for his actions (Peretiatkowicz, 1923:9). The need to provide for a strong executive powers in time of external danger and internal instability seemed to collide with the necessity to accommodate numerous political parties.

The democratic form of government was not immediately replaced by an authoritarian system mostly for the following reasons: 1) the strong commitment of almost all parties and their leaders (with the exception of the communists and the monarchists) to the idea of a democratic republic; 2) Pilsudski's unwillingness to use his broad appeal in the nation in order to seize absolute dictatorial powers; 3) the desire on the part of the National Democrats (mainly of the party leader Roman Dmowski) to prevent any strong executive office for the fear that such position would inevitably go to Pilsudski (Polonsky, 1972:100).

The Period of Sejmocracy and Its Consequences

The constitution which was passed by the National Assembly on March 17, 1921 indicated a major political compromise but it did not end a bitter rivalry between the two major visions of Poland's future. Pilsudski, the advocate of a non-political army and strong executive powers, obviously tried to secure for himself a privileged role in Polish politics, but at the same time he remained faithful to the idea of fundamental democratic rights for all Polish

citizens, not only the ethnic Poles. Following his disappointment with the system dominated by the political parties, after 1922 he seemed to have abandoned any plans for an executive office. His main rival, National Democrat Roman Dmowski saw in the parliamentary democracy a chance to introduce his political program. The ideology of the National Democratic party, although remained "democratic" in its name and official declarations, was committed to the struggle for a country dominated by the ethnic Poles with a privileged position for the Roman Catholic religion. This nationalist ideology acquired substantial following during the 1920s (Polonsky, 1972:52-61). The distribution of state authority prescribed by the 1921 Constitution reflected a strong bias in favor of committed party politicians.

The basic law of the French Third Republic was chosen as a model for the Polish political system (Jedruch, 1982:343)¹. The March 1921 Constitution declared that "the sovereign power in the Polish Republic shall be vested in the Nation" (art. 2). The main democratic tendency was expressed by the powers granted to the Diet (Sejm), which was declared "a representative of the Nation." All laws required authorization from the Diet. The Sejm controlled the Government. The vote of non-confidence could dismiss any single minister or the whole cabinet. The deputies were guaranteed broad legal protection and immunity from prosecution. They were elected to represent the Nation as a whole and could not be

held responsible to their specific constituencies (art. 20). The other chamber of the parliament, the Senate, was granted rather limited powers, amounting mostly to an advisory role in reviewing the Sejm legislation. A desire to prevent a strong executive was reflected by the limited presidential powers.

According to art. 39, the President was to be elected by the National Assembly for the period of seven years. The chief executive could dissolve the parliament only with the consent of the Senate. He was not granted legislative initiative nor veto power. The president could only issue executive orders regulating the implementation of statutes. The presidential power to issue decrees was restricted and required a co-signature of an appropriate minister. Thus the President was exempt from civil or parliamentary responsibility, but could be accused before the Tribunal of State for constitutional violations. An organ instituted for the purpose of auditing the state administration - the Supreme Chamber of Control (Najwyższa Izba Kontroli - NIK), was nominated by the Sejm and exempt from the executive supervision. The distribution of state power at the local level was, however, much less clearly defined.

The democratic principles of local self-government were adopted in the form of decentralization and aimed at political as well as economic autonomy (art. 66, 67, 68) but the state also secured for itself strict control over those

autonomous organs (art. 70). The Constitution failed to specify the legal relationship between the state administration and the local elective bodies, leaving the eventual solution of this problem to the future law regulating administrative jurisdiction (the Administrative Tribunal) (art. 73). The institution of independent judges, appointed by the president was both protected from administrative organs and separated from urgent decisions in state matters.

The judiciary branch was not permitted to exercise constitutional authority in challenging the legality of the statutes (art. 81). The ultimate judgement about the state law belonged to the Sejm, which elected the Tribunal of State. The Supreme Court was allowed to judge the validity of parliamentary elections when the official results were contested. This was an important step forward towards a greater role of the courts (Peretiatkowicz, 1923:10). A democratic intention of the 1921 Constitution was fully expressed by a set of provisions regarding the rights of individual citizens.

The basic law guaranteed freedoms of speech, association, migration, and assembly. Significant protections against arrest and seizures were also emphasized (art. 95-101). A need for state assistance "in case of unemployment or accident" was acknowledged (art. 102). These assurances, along with a promise of free elementary education for all citizens, signalled an attempt to increase the state's

responsibility for the welfare of individual citizens. All those rights and liberties were preceded in the text by six articles (art. 89-94) concerning citizens' obligations, including military service, parents duty to provide for their children's education, and other public burdens which might be imposed by the state. The Council of Ministers (Government)² could suspend the basic rights of citizens in case of a national emergency. For this decision a consent of the President was required. Finally, such decrees were always subject to the final sanction of the Sejm (art. 124). The Diet became not only the major guardian of individual rights, but also of the basic law as a whole.

An amendment to the Constitution could only be passed by a majority of 2/3 of the Sejm in the presence of at least one half of the total number of deputies (art. 125). Such motion could only be initiated by at least 1/4 of the total number of deputies and had to be announced 15 days in advance. A systematic revision of the Constitution was to be made every 25 years by the National Assembly (the Sejm and the Senate). The government structure, as described so far, resulted in the unquestionable dominance of the Sejm.

If a principle of elective representation is accepted as a pillar of modern democracy, such system could have been easily justified in terms of offering the freely chosen delegates an institutionalized access to the decision making process and thus expressing the will of the nation as a

whole. In the context of very unstable politics in Poland the electoral ordinance to the Sejm proved unable to successfully combine the idea of just and proportional representation with the competitive multi-party system. Lists of candidates were set up in each district by the parties. Voting was to proceed according to the "universal, direct and equal ballot in conformity with the principle of proportional representation" (d'Hondt system) (art. 11).

Even the smallest parties were able to secure their own representatives in the Diet. The largest ones benefited additionally from the so-called "state lists" which included "the most respectable citizens" who otherwise might have been rejected by the voters (Peretiatkowicz, 1923:9). The right to elect deputies to the Sejm for a 5-year term was guaranteed to all men and women, at least 21 years of age (art. 12). The active military personnel did not have this privilege (Pilsudski's influence, - [T.I.] - see above).

Elections to the Senate were conducted according to similar principles. Only the voting age was raised to 30 years and the eligibility for a seat was raised to 40 years instead of 25 for the lower chamber. Some minor residency requirements for the voters were also added (art. 36). The military persons in active service could be elected to both chambers.

This short description of the basic principles of the "March Constitution" (Konstytucja Marcowa) reveals an

institutional pattern whose obvious democratic foundations may obscure a real possibility of change in the authoritarian direction. This threat to democracy could have emerged both from within the legal system itself as well as from the extra-constitutional action.

The Sejm was granted very broad powers and since none of the parties could on their own emerge with a clear majority in the chamber, a potential threat by a single extremist group appeared remote. Nevertheless, the National Democrats, for instance, have demonstrated their unusual strength and ability to form coalitions in the aftermath of the 1922 elections. A lack of counterbalance from a strong executive not only encouraged greater party militancy, but first of all caused government instability. This situation, in connection with various corrupt practices of the deputies, led to the system of rule called "Sejmocracy" (Sejmokracja) (Watt, 1979:175-195).

On the level of local administration another threat to the democratic principles of government was evident. A contradiction between a desire for close national unity and granting extensive self-government to various localities was not satisfactorily resolved. Basic freedoms for the individuals, including special provisions for ethnic and religious minorities, were guaranteed (arts. 109-111). At the same time, however, the Roman-Catholic Church was granted a special privileged status (art. 114) and the legal

situation of other religions was heavily dependent on the state regulation (arts. 112-113; 115-116). The duties of the citizens to the state seemed to indicate clear priority of the national over the individual welfare and security. A special position of such obligations in the Constitution could be better understood in relation to the specific conditions of the Polish state. The necessity to protect the newly won independence amid imminent dangers of foreign aggression could have been the most significant justification behind imposing certain burdens on the population, such as the military service. A large number of men under arms, however, could also constitute a destabilizing factor for a new democracy.

Marshal Pilsudski especially insisted on the military autonomy with an independent Inspector General of the Army as its head. His authority among the officers' corps was perhaps, much weaker than in the population as a whole, but what counted was that "the Sejm did not dare enact [an] army organization project of which he disapproved" (Rothschild, 1966:37-38). The Constitution made the President Commander-in-Chief in time of peace. In case of war the chief executive was to appoint the Supreme Commander. The influence of the Minister of War (responsible to the Sejm) upon this nomination is also evident in the Constitution (art. 45-46). In the mid-1920s, an attempt to reorganize the military further along these lines was designed to erode

pilsudski's power base within the army by strengthening the parliamentary control (Rothschild, 1966:31).

On the surface, such move looked like an attempt to eliminate an authoritarian threat by subjecting the army to democratic control. In reality, however, this move was sponsored by the National Democrats in order to undermine pilsudski's influence (27-44). The subsequent political developments in Poland brought to the fore strong anti-establishment forces which sought to abolish the existing form of the Sejm-dominated democracy.

The idea of constitutional change surfaced as a result of the coup d'etat in May 1926. Marshal Josef Pilsudski, the leader of the takeover, assumed a role of virtually unquestioned authority for the new "Sanacja" regime.³ The Polish strongman himself, although actually functioned as a dictator until his death in 1935, never was a dedicated enemy of democracy (Watt, 1979:265; Kulesza, 1985:50-51). After the coup his political supporters were faced with an uneasy task of laying foundations for a new government. A need for basic changes in the state law was acknowledged not only among Pilsudski's followers, but also by some opposition parties that did not benefit from the previous parliamentary rule. On the left there was a hope for more radical reforms. Some parties on the right saw the coup as a preferable alternative to communism or other revolutionary solution (Polonsky, 1972:173-77). These opinions notwithstanding, the

change which actually did occur led to the abandonment of the "March Constitution" in favor of a specific Polish version of authoritarianism.

The tendencies for reform originated from at least three different sources. Pilsudski himself provided an ideological inspiration, but he never really expressed a coherent and comprehensive political program for his supporters. His initial willingness for accommodation with the Sejm inspired a conciliatory position, manifested by the prime-minister Kazimierz Bartel (Kulesza, 1985:72-77). On August 2, 1926, significant constitutional amendments were passed, giving the President additional powers to issue decrees while the Sejm was not in session, allowing him to dissolve the parliament without previous restrictions, and strengthening the political control exercised by the Government (Kulesza, 1985:74; Polonsky, 1972:182-83). The question of the military was settled in a compromise by governmental decrees, challenging the presidential authority over the army and nominating Pilsudski both the head of the Inner War Council and the Minister of War. The Marshal thus managed to keep this institution away from political conflict although the individual army officers actively participated in the government affairs during the years following the coup (Polonsky, 1972:195-97). At the same time, some more aggressive positions emerged within the "Sanacja".

In the beginning, the Sejm's role in revising the constitution, which meant also collaboration with the opposition, was acknowledged by Pilsudski's supporters. Later on, however, more elitist and authoritarian tendencies became prominent. A conservative faction placed emphasis on the individual freedoms and a selective access to the political process (Kulesza, 1985:108-114). Another view, expressed by the "colonels' group", advocated an authoritarian model based on the supreme interest of the state, superior to individual rights and privileges (Kulesza, Chapter V).

This latter group gained considerable influence within the pro-"Sanacja" organization -- The Non-Party Bloc for Cooperation with Government (Bezpartyjny Blok Wspolpracy z Rzadem - BBWR). The parliamentary elections of 1930, conducted in the atmosphere of a strong anti-opposition campaign by the government, brought a definite victory for the Bloc. The final proposal for a new "constitutional legislation", sponsored by the BBWR, was passed despite obvious violation of the law in 1934.⁴ Because of Pilsudski's insistence for a proper parliamentary procedure the final vote on this matter was delayed until April 1935.

The Constitutional Basis of the "Sanacja" Regime

The distribution of authority in the new constitution was strikingly different from the previous law. The former rule

regarding the separation of the three main branches of government: the executive, the legislature, and the judiciary was officially abandoned (Wereszczynski, 1936:36). The President was to occupy the most influential position. The other branches of government, totally subordinated to him, were defined as follows: The Council of Ministers (the Government), the Sejm, the Senate, the Armed Forces and the Supreme Chamber of Control (art. 3). A candidate for president was to be chosen either by the Electoral Assembly or the incumbent president himself (art. 16). The Assembly was selected only partially by the Sejm (50 members) and the Senate (25 members). The highest government officials such as the marshals of the Sejm and the Senate, the Prime-Minister, the Chief Justice of the Supreme Court, and the General Inspector of the Armed Forces automatically became members of that body (art. 17). When the incumbent president nominated a candidate different from the one chosen by the Assembly a popular election had to be called.

Presidential decrees were made equal in legal status to the Sejm legislation. The veto power was granted to the chief executive and he was entitled to dissolve the Sejm and the Senate at any time (art. 13). The Government was made responsible to the President and his approval was needed for the parliamentary motion of no-confidence. In response to the Sejm's vote of non-confidence the President could either dismiss the cabinet or dissolve the Sejm (art. 29).

The President was also guaranteed an indirect role in the legislative initiative through influencing particular ministers selected by him (art 25, par. 5). Thus the Government, backed by the presidential authority, assumed a very advantageous position in confrontation with the Sejm. The constitutional responsibility of the President was eliminated by granting him special prerogatives which regulated "important matters of the state" and were exempt from the requirement of a ministerial co-signature (art. 13). Among them were such rights as the nomination of the Prime-Minister, the Chief Justice, the Chief of the Supreme Chamber of Control, the General Inspector of the Armed Forces, the Supreme Commander in time of war, the judges for the Tribunal of State, the 1/3 of the Senate members, and the executive pardon. Finally, the President was obliged to protect the general well-being of the state and its security. However, his responsibility for these and other duties was severely limited (art. 15), as one Polish contemporary writer put it: "this [President's responsibility] was left to the judgement of 'God and History'" (Wereszczynski, 1935:76).

The democratic nature of the political system was not so much undermined by the strengthening of the presidential office, as by a lack of proper balance between the executive and the legislature. The Sejm not only lost its dominant role as the law-making body, but also its exclusive domain was reduced mostly to the control over the budget, and even

here a specific time limit was set (arts. 58-60). The Constitution explicitly stated that "the functions of governing the state do not belong to the Sejm" (art. 21 par. 3). The constitutional change also affected the immunity of the deputies.

The members of the Sejm who committed offenses against the state could be accused before the Tribunal of State, the institution now controlled by the President (art. 41). The Sejm retained its power as an important legislator in most state matters, but the Senate review powers were broadened.

The majority of 3/5, instead of the former 11/20, of the Sejm deputies was needed to defeat Senate amendments of legislative acts. The marshal of the Senate was also made a chairman of the joint sessions of both chambers, and his political position became more powerful than that of the Sejm. He retained most of his powers even at the time Senate was not in session or after its dissolution. In case of presidential incapacity the marshal of the Senate was entitled to exercise chief executive powers (art. 23).

The changes leading towards limiting the role of the Sejm coincided with a move against party dominance in the political process. The main indication of this tendency was the new electoral ordinance of July 8, 1935.⁵

The new law provided for special district assemblies which selected candidates for deputies. The delegates for

these assemblies were to be chosen by the local self-government councils, business associations, trade unions, professional organizations, academic institutions, and other similar groups. Also delegates of the population as a whole could be designated in proportion of one for every 500 voters. The "state lists" of candidates were abolished. The proportionality clause was also abolished, making it more important to vote for a particular name than a party label (Wereszczynski, 1936:105-106). The other four basic electoral principles, that is: universal, secret, equal and direct voting were confirmed (art. 32, par. 1). The electoral procedure however, was designed in such a way that the first two candidates on the list had a clear advantage over the others (Wereszczynski, 1936: 113). Given the increased government influence in the electoral process, it was possible for the authorities to control the outcome through an appropriate ordering of the names on the ballot. Finally, a substantial number of voters was eliminated by raising the age limit to 24 years. Even more significant changes took place in the case of senatorial elections.

Only three elite categories of persons, chosen on the basis of their personal merit, education, and citizens' trust (that is members of local self-government or professional and educational organizations) could vote for the Senators, provided that such people were at least 30 years old. These citizens voted indirectly by choosing delegates to the

electoral colleges. Only 2/3 of the Senate was subject to election. The remaining members were nominated by the president. Only persons 40 years of age or more were eligible.

The Courts turned out to be the least affected by the new law, at least in their independence from the executive. The President retained his function to nominate the judges. The courts were independent from the state administration and a special tribunal was set up to resolve conflicts between the government agencies and the judicial system (art. 70, par. 1c). A separate Supreme Administrative Tribunal was created to judge the legality of administrative acts - a continuation of the previous constitutional intention from 1921 (art. 70, par. 16). The courts were not allowed to question the validity of the legislation (art. 64, par. 5). According to the 1928 decree regulating the court system, a special government prerogative in case of internal disturbances or war allowed for the creation of special courts, exempt from an established legal procedure (Wereszczynski, 1935:280-281). The first chapter of the 1935 Constitution established the basis for relationship between the citizens and the state expanding the authority of the latter over the individual rights (arts. 4-9).

Some important rights were retained in the previous form (art. 99, 109-118 and art. 120 of the old constitution), but at the same time the new law placed citizen's obligation

to the state more explicitly before his freedoms.⁶ While the individual rights were subordinated to an idea of "general well-being", the protection of private property and the special status of the Church were left intact. In the official propaganda of that time the "solidarity theory" was referred to by some writers as a proper foundation of the relationship between the citizens and the state. This idea was explained as a most suitable alternative to totalitarian regimes (Panstwa Totalne) and liberal democracies (Panstwa Liberalne). Philosophical and legal foundations of the new system were traced back to the syndycalist theory of George Sorel and the solidarity theory introduced by a French legal scholar Leon Duguit (Wereszczynski; 1935:302). The authoritarian ideas formulated in such way were intended not only for the central government.

On the local level, a great emphasis was put on the close cooperation between the elective bodies and the state administration. However, after abolishing the old law the Constitution did not specify any new rules for the local government. Only in the late 1930s the new statutes added some special powers to the local Government executive officials (206). The final introduction of the basic law was a result of a long process of ideological, political, and legal preparation. The Constitution was designed to last.

It was extremely difficult for the Sejm to pass constitutional amendments. Such proposals had to be

initiated by at least 1/4 of the total number of deputies. They became law only if passed by a legal majority (a half of the total number of members plus one) of both houses of the parliament. The President was allowed to veto such bill. In case this was overridden he could dissolve the Sejm and the senate. The chief executive himself had the right to propose constitutional amendments. The vote on his proposals was to be based on the usual majority (at least 1/2 of the members present) of both houses. A presidential project could only be rejected or accepted as a whole (art. 80). The authoritarian tendencies, expressed most clearly by granting the President and the Government such extraordinary powers, were so obvious in the 1935 Constitution that a strong reaction from the political opposition was hardly a surprise.

The electoral boycott in 1935 and 1938 was the most visible evidence of the anti-authoritarian sentiments. Nevertheless, the major political parties were not banned (except for the communists and groups labelled as "subversive") and could in fact sponsor, if not openly endorse, particular candidates for elective offices. Despite increasingly hostile policies of the "Sanacja" regime in the 1930s, the parties did not lose all their strength and vitality on the political scene. It appeared that the electoral boycott, while denying legitimacy to the regime, removed the parties from significant influence in the government. However, largely due to the deep-rooted

traditions, the party influence was clearly demonstrated during the 1938 local and municipal elections (Jedruch, 1982: 363-64). Yet another consequence of the constitutional intention was a number of decrees further limiting the scope of individual rights.

The strong role of the Government has been reinforced by such regulations as the 1932 laws concerning the associations and assembly procedures (Wereszczynski, 1936: 306-07). The "Sanacja" domestic policy, although increasingly repressive towards the opposition after 1930, was, however, never implemented in a systematic and ruthless manner reminiscent of the modern totalitarian regimes.

According to a Polish conservative historian, the 1935 Constitution was influenced by three important factors: "1) the political system of the United States; 2) the attitude toward Pilsudski as a presidential candidate [and] 3) modern ideas of authoritarian constitutional thought" (Cat-Mackiewicz, 1940: 231-32). The Constitution was also interpreted as an attempt to preserve Pilsudski's ideas (Jedruch, 1982: 360-61). The Sejm, despite its subordinate role, remained an important institution. After the death of the "Marshal" the regime was unable to maintain the non-party form of support either in the parliament or in the society as a whole. The BBWR was finally dissolved at the end of 1935.

Obviously totalitarian schemes, initiated by the "colonels' group" (mostly the members of the Camp of National



Unity--OZON, created in 1936) and their supporters on the political right, failed miserably due to the strong opposition inside the Government (Polonsky, 1972:430-434). An example of dangerous trends toward a military dictatorship was evident in an unusual presidential instruction issued in June, 1936. It gave the Supreme Commander of the Armed Forces a right to special honors which had been reserved so far for the president himself (Cat-Mackiewicz, 1940; 289-93). However, by 1938 the government became less tolerant of such obvious constitutional violations and more favorable in relations with the opposition (Polonsky, 1972:435).

Many democratic practices were weakened but not abandoned after 1935, mainly for the following reasons: 1) the political program of the "Sanacja" failed to gain popular support; 2) the concept of the state, not a mass political movement constituted a basis for the system (Kulesza, 1985: 276-285); 3) Pilsudski's influence was characterized by hostility towards the models of Italian fascism and German Nazism, and his "old-fashioned" belief in the parliamentary system (285), although not in unrestricted party pluralism. All these factors greatly contributed to the specific character of the Polish authoritarianism introduced by the 1935 Constitution.

Andrew C. Janos, in his analysis of East European political history calls the democratic elements in the pre-1939 authoritarian regimes in this area "pluralism by

default, not by design" (Huntington & Moore et al, 1968: 233). The specific external influences notwithstanding, as long as the "Sanacja" regime accepted Pilsudski's ideas and their constitutional reflection they could not completely reject democracy. The Constitution never became only a tool of a dictatorial regime, largely due to the role of the traditional elites in the Polish society.⁷ Hence, modern totalitarian tendencies did not have a real chance to develop in independent Poland. The democratic forces among those elites were not definitely cut-off from influence and could still rely on local power bases. The "Sanacja" was first unwilling and then unable to organize its own cohesive and strongly ideological party. Together with the lack of mass support among the population, this factor contributed to actual weakness of the Polish authoritarian regime envisioned by the 1935 Constitution.

NOTES

1. Refer to Jedruch (1982) for a detailed discussion of the democratic tendencies in the Polish constitutions and legislation since 1493.
2. As Jedruch (1982) points out, an important distinction exists between the Polish language words "rząd", and "rządzić" meaning "government" and "to govern". In many cases European usage of the word "rząd" refers to the executive function only, in contrast to the American understanding of "government" which describes the legislative and judiciary branches as well. In this chapter the word "Government" is used in the sense of Polish "Rząd" and "government" (small 'g') retains its broader meaning.
3. As Polonsky (1972) explains, the term "Sanacja" could be translated as "something between 'purification' and 'reform', and was chosen in order to indicate the Government's desire to clear away the negative features of the pre-1926 political system (p. 183).
4. Article 125 of the 1921 Constitution required a 15-day notice on such move, which was not given at the time.
5. See: Constitution of the Republic of Poland (1935): for the Outline of Legislation on Elections, pp. 39-47.
6. Article 7 in paragraph 1 declares that: "The rights of a citizen to influence public affairs will be estimated according to the value of his efforts and services for the common good."
7. For the discussion of the "elite" concept in the 1935 Constitution see the analysis of Kulesza (1985) pp. 173-177.

CHAPTER III

THE POLITICAL AND IDEOLOGICAL ORIGINS OF THE CONSTITUTION OF THE POLISH PEOPLE'S REPUBLIC

Both the March 1921 and the April 1935 constitutions reflected certain democratic and authoritarian ideas which had developed within the Western world. The 19th century concepts of liberal and democratic state clashed with modern elitist and autocratic philosophies. The post-World War II political situation led to the creation of a quite different type of state in Poland, called the "People's Republic".

After 1944, the constitutional debate occurred as an underlying phenomenon in the struggle of various political groups for legitimacy. From the collapse of Poland in 1939 until the introduction of the new constitution in 1952, three different documents were considered, at various time intervals, the basic law of the country: 1) the April 1935 Constitution; 2) some principles and provisions of the March 1921 Constitution (exactly what these were is still debatable); and 3) the "Little Constitution" of 1947.

During the early years after the war the Soviet-backed provisional government functioned on the basis of major decrees and proclamations aimed at creating the necessary foundation for a new political system. In the Marxist literature this type of activity which regulated many aspects of constitutional law outside of a constitution has been

labeled "constitutional practice" (Jarosz & Zawadzki, 1987:98-99). In Poland this phenomenon emerged as a useful legal and political device for the communists in their struggle for power.

Until 1945 Poland had officially only one government, residing in London, and exercising its authority over the "underground state" in the occupied country through its delegate. The London government recognized the April 1935 Constitution as remaining in force until the formation of independent Poland after the war. This attempt to secure legal continuity of the Polish state was opposed by the soviet-sponsored government residing in Lublin, Poland, and formally organized on December 31, 1944.

The first document indicating changes in a future constitution was the proclamation of the Polish Committee for National Liberation (Polski Komitet Wyzwolenia Narodowego-PKWN), announced already in July, 1944. This document avoided any direct reference to a total revolutionary transformation of the society and politics along the communist lines. However, a significant program of land reform and nationalization of the basic industries were initiated. This constituted the first significant challenge to the former constitutional protection of the private ownership in the economic sphere.¹ The PKWN also called for a wide "national front" which would include all "democratic forces". The 1921 Constitution with its "parliamentary-

democratic principles" was to be temporarily accepted as the basic framework for government operations.

The communist Polish Workers Party (PPR) was the instrumental force in the policy-making process of that period. The representative body of the new government--the National Council (Krajowa Rada Narodowa-KRN), which functioned as a substitute for a parliament, never actually accepted the whole March Constitution as a foundation of the new state. The communist politicians who controlled that body could therefore selectively apply in practice some of the constitutional provisions, while omitting the other.

In the summer of 1945 the Western Allies switched their official recognition from the London based government, led by a socialist Tomasz Arciszewski, to the Lublin authorities. This was a turning point in the struggle for the future political system in Poland. Under an agreement negotiated with the Western Allies at Yalta, Soviet leader Stalin agreed to a formula for the new Polish government which would include some "democratic elements" from the London government. Former prime-minister of the government in-exile Stanislaw Mikolajczyk, who opposed Arciszewski's policies, decided to return to Poland with a group of followers and joined the provisional government in the summer of 1945. This political group, which existed in opposition to the communists until 1948, attempted several times to make the 1921 Constitution a real foundation of the future Polish

state (Rybicki et al 1977: 304-05). However, by the time these forces joined the new government, the communists had already managed to acquire considerable advantage due to the powerful domestic and international factors.²

The official communist interpretation of the post-World War II situation provided a guideline for the exercise of the "constitutional practice". The rejection of the "bourgeois" theory of law led to the condemnation of any democratic form of government, which originated from a "capitalist-dominated society". The new law, "determined by the historical necessity," was supposed to represent the working masses.³ The democratic facade, reminiscent of the previous systems was preserved for the most part. This was the case mainly because of the following: 1) the Soviets insisted on such arrangement, both as a proof of "good intentions" for the Western Allies, and as a useful method to deceive any political opposition in Poland; 2) the population in the country was very hostile to any obvious radical changes toward the Soviet model (Polonsky & Drukier, 1980:67-90; 3) the conservative and liberal-democratic traditions were very strong among the prominent elites and the communists had to acknowledge this in their attempts to change the political system (Rybicki et al, 1977: 305-07); 4) the faction which emerged from the internal struggle within the PPR advocated a moderate course and condemned the "sectarian

elements" pushing for more radical solutions (Polonsky & Drukier, 1980:114).

The early PKWN initiative to introduce a democratic form of government was based on the Soviet model of the local community councils responsible to the National Council (KRN). The presence of the strong authoritative tendencies was, however, from the very beginning hidden behind the apparently democratic structure. When the opposition elements began to gain ground within the councils this institution was abandoned in favor of the old, centralized administrative model, based on the pre-war system (Polonsky & Drukier, 1980:34). As their power became more consolidated the communists returned to the idea of those Soviet-style councils. This time the powers of such assemblies were severely restricted by the PPR (78). The constitutional practice of this period resembles closely ruling methods of a typical authoritarian government which is said to possess "an inherent tendency to proliferate legal norms" (Friedrich & Brzezinski, 1965:120).

While admitting the political opposition to the government, in practice, the key ministries (industry and trade, and public security) were controlled by the PPR. Also the army was strictly under the communist (and Soviet) control (Polonsky & Drukier, 1980:126). The pluralist party system was nominally reestablished, but the opponents of the "national front" were officially labeled as "reactionaries"

or "fascists". The so-called "friendly parties," on the other hand, were either encouraged or coerced into close cooperation with the PPR--thus surrendering their independence (Mikolajczyk, 1948; Cękański & Lityński, 1987:16).

In 1946 the communists officially revealed their intentions to introduce particular constitutional reforms. A law was passed declaring a national referendum. A popular vote was called on three issues: 1) the elimination of the Senate; 2) the introduction of land reform and nationalization of the basic industries with a preservation of some elementary private ownership rights; 3) the confirmation of the new western borders of Poland. The communists called for a positive vote on all these questions and the official results showed the majority supporting this position.

The idea of a national referendum appeared in the communist constitutional practice for political reasons in order to help legitimize the regime and gain advantage over the opposition. Later the referendum law was not included in the actual charter of 1952. It appeared that in the 1950s the established communist regime was not eager to provide additional opportunities for the expression of public opinion. Aside from this, a seemingly democratic nature of this particular referendum was obscured by some significant factors: 1) the questions did not address any real controversial issue among the population and the voting actually was reduced to the role of legitimizing the

communist policies; 2) the decision of the opposition forces to support the Senate in order to demonstrate their strength brought about a widespread campaign of repression and election fraud, inspired by the PPR (Mikolajczyk, 1948: Chapter 13); 3) the law did not specify whether the results of the referendum were to be legally binding or had only a consultative role (Jarosz & Zawadzki, 1987:43).

The communist takeover culminated in the 1947 parliamentary elections. Despite protests from the opposition and proofs of electoral fraud the PPR-led bloc of parties won the majority of seats. Even if the independent deputies from the Mikolajczyk's Peasant Party (Polskie Stronnictwo Ludowe--PSL) could still utter their opinions in the newly elected Sejm their attempts to return to the form of the 1921 Constitution were futile in practice. The communist--sponsored coalition claimed that "the mechanical reproducing of the March Constitution would be contrary to our reality, it is a closed chapter of our constitutional law" (Rybicki et al., 1977:57).

There were several important reasons why during 1947-50 a definite turn in the direction of the authoritarian (or rather totalitarian) rule became evident. First of all the Soviet influence in Polish affairs increased greatly after 1947 (Bromke, 1967:62-65). The real opposition, outside of the "national front ceased to exist in 1948. Also in 1947 the so-called "Little Constitution" was adopted, which did

not contain any clear legal constraints on the authoritarian government practice.

The process of "Stalinization" in Poland began actually in 1948 after the PPR staged a "unification" with its close ally, the new Polish Socialist Party (PPS)⁴, forming one Polish United Workers' Party (PUWP--PZPR). During the same year the nationalist faction within the party, headed by Wladyslaw Gomulka, was purged, leaving the way for a small group of Stalinist politicians who practiced authoritarian methods of decision-making under close supervision from Moscow. For the communist leaders the Little Constitution appeared to be a suitable temporary substitute for the basic law.

While repeating the historical experience of 1919-22 and formally accepting the basic foundations of the March 1921 Constitution, the Little Constitution of 1947 was extremely vague in its formulation and lacked proper constitutional legitimacy. Individual rights, for example, were not mentioned at all. This caused some of the communist legal scholars to suggest that the Sejm was at the time the sole protector of such rights (Rybicki et al., 1977:59). The Little Constitution also failed to specify the role and structure of the judiciary and thus in practice during the period of early 1950s there existed special commissions and tribunals which imposed severe penalties on the citizens on the basis of temporary legislation and in violation of a

normal independent legal procedure (Jarosz & Zawadzki, 1987:60). In the atmosphere of an increasingly ideological debate the very need for a new constitution was questioned by some Marxist scholars. A solidarity theory of Leon Duguit, which had influenced the 1935 Constitution resurfaced once again, but this time in the context of a classless society (Rybicki et al., 1977:302-03).

What finally led to the adoption of the new constitution in 1952 was not a result of a prolonged debate over the new law, but a desire to bring about a final legitimation of the Stalinist idea of the "people's democracy". To a lesser degree a traditionally strong symbolic value that the constitutional documents had retained throughout the Polish history also played a role here (Rybicki et al., 1977:295-296). In their study of the first Sejm the official Marxist scholars failed to determine the exact reasons why the adoption of the constitution was delayed several times. The official reason given, a need for popular consultations, did not appear satisfactory even to the Marxist researchers themselves (Rybicki et al.:319-321). It is very likely that both the authoritarian rulers of Poland at the time and their Soviet backers were not eager to commit themselves prematurely to any more precise legal framework which would regulate social and governmental activity.

Ideological foundations of the People's Republic of Poland.

The process of political and socio-economic transformation initiated by the communists in Poland after World War II is commonly described in the official Marxist literature as a "revolution" leading to the seizure of power by the working people (Jarosz & Zawadzki, 1987:27-36). The new state and its constitution were established as a result of a political takeover by the Communist party and the power aspect of its rule cannot be understood without the ideological context. Ideology often stands in a way of rational action and obscures the perception of socioeconomic reality which in turn is supposed to justify the revolutionary transformation of society, a process determined by historical necessity.

The role of the state itself, its structure, and consequently a need for a constitution, was a considerably neglected aspect of Karl Marx's political thought. Whereas he, and later his collaborator Friedrich Engels stressed the class character of the "bourgeois state" as an exploitative force, they never produced any general "theory of the state" (Jessop, 1978:40). [emphasis added T.I.] What remains a special interest of the Marxist scholars until today is the problem of the role of the state during a transition from a "capitalist" society to a "communist" one.

Marx's prediction that the bourgeois state will simply "wither away" did little to solve this dilemma. In conse-

quence, it was Lenin and later Stalin who, due to their position of authority in the communist movement, conceived of ideological doctrines explaining the role the state was to play in the process of revolutionary change. Lenin's argument contained in his work State and Revolution became a major ideological foundation of the modern Soviet and East European states. The Russian revolutionary leader singled out Marxian description of the Civil War in France and presented the short-lived phenomenon of the Paris Commune, (1871) as a model of a transitory state with "the proletariat organized as the ruling class" (Lenin, 1983:21-22). While recommending "smashing of the old [bourgeois] state machinery (96), Lenin, at the same time, opposed anarchy and spoke in favor of the strong party organization, able to lead the "dictatorship of the proletariat" (55-59). While rejecting bourgeois parliamentary democracy, Lenin acknowledged that "the transition from capitalism to communism [emphasis added] will certainly bring a great variety and abundance of political forms...". He added, however, that "the essence will inevitably be only one: the dictatorship of the proletariat" (Lenin, 1983:31). This statement is in fact the core of ideological justification which can be used at present by the communist parties in the Soviet bloc to explain the diversity of their various paths of socialist development.

Lenin's interpretation of Marxism stresses the importance of national unity--"to be organized by the communal constitution" (Lenin, 1983:45). This implies a need for a central government authority during the revolutionary transformation of society. Stalin further developed this idea in his totalitarian, modern version of the Russian state and later in his policies of imposing similar political systems in Eastern Europe. Important political considerations, however, were the reason why some deviations from the Leninist pattern occurred.

Due to the relative weakness of the communist parties in Eastern Europe after World War II, the new regimes installed by Stalin, with a notable exception of Yugoslavia, initially were kept in power only thanks to the presence of the Red Army. The Soviet leader, aware of the difficult domestic conditions the local communists had to work in and the internal and external threats to their rule, had to devise such methods of consolidating their power which could bring immediate results. This had to be done even at the cost of a temporary ideological compromise with the hostile "bourgeois elements". These considerations, in addition to the fear of Western reaction, contributed to the establishment of a new form of state called "People's Democracy" and based on a wide national front of political parties with the communists still in the minority, but allied with friendly, "progressive" peasants and "democratic" bourgeois elements.

Brzezinski's analysis of East European People's Democracies distinguishes two initial stages of their development. First of them, lasting approximately until 1948 was characterized by some institutional remnants of the "old regime" in each country. What followed, was a period of intensive "Stalinization", meaning the adoption of the Soviet model of socialism. The 1936 Stalinist Constitution became an example of state organization of an advanced socialist society (Brzezinski, 1967:25-104).

Poland, like other Soviet bloc countries, adhered to the same pattern of development. The 1952 Polish Constitution was a "product of more ripened Stalinism" (Brzezinski, 1967:78). Thus its content is actually remi-niscent more of the Soviet 1936 Constitution than some fundamental principles of the March 1921 Constitution of Poland which were initially accepted by the new, communist dominated regime. In the original text of the basic law the country was never called a "socialist republic". Nevertheless, by 1952, in result of the ideological shift within the Soviet bloc, the Polish state like other People's Democracies in Eastern Europe had been already officially recognized as a "dictatorship of the proletariat" (Brzezinski, 1967:74-76). (Appendix 1) This adherence to the Soviet pattern, even if subsequently relaxed in actual constitutional practice, legal amendments, and ideological proclamations, has remained a severe handicap for

the Polish regime in its confrontation with the reality of social development and the indigenous national traditions.

Major Provisions of the 1952 Constitution

In the 1952 Constitution the principle regarding the "sovereignty of the Nation" was meant to reflect the new socio-political relations in the country (Rybicki, et al, 1977:80). Art. 2^o declared that Poland was a republic of the urban and rural working people. The role of the Communist party (PUWP) was not explicitly stated in the basic law. Hence, in reality the political power was exercised from outside of the constitution according to the ideological argument that the party is the sole representative of the working class. The general intention to attain future "higher" goals of a "socialist society", based on the Soviet model, was however, clearly stated in the preamble. One of the articles plainly expressed a basic tenet of socialist socio-economic relations: "from each according to his ability, to each according to his work" (art. 14). Besides the obvious influence of the Soviet 1936 Constitution some important provisions were similar to the Polish March 1921 law, like for example the powers of the Sejm.

The Sejm became the highest organ of state power (art. 15) with exclusive law-making rights. The Sejm elected the Council of State, the prime-minister and other Government members. However, the legislative initiative granted the

deputies was not specified. The members shared this right with the Council of State and the Government (art. 20). A signature of the Council of State was needed to introduce a new legislation, but this did not amount to an executive veto.

According to the Stalinist model, the Council of State replaced the office of the President which existed until 1952. The Council was subordinated to the Sejm, but could issue binding decrees when the Diet was not in session (art. 23). It was also given the power to "convene the sessions of the Sejm and lay down binding interpretation of the law" (art. 25, par. 3 & 7). A very important addition to its influence was the power to ratify international treaties (art. 25, par.7).

The abolition of the traditional division into the three separate branches of government which had already taken place after 1935 this time was carried to the other extreme. The Sejm deputies were not banned from membership in the Council of State. Also, they could become ministers and were able to hold professional and state administration jobs during their term in office. In an original move, with no equivalent in the Polish constitutional history, the deputies were made legally responsible for regular reporting to the electorate and were subject to recall (art. 87).

A mixture of continuity and change in the previous democratic traditions was reflected in the chapter describing

the judicial system. The institution of the Supreme Court was reestablished (art. 46) and the judges were guaranteed independence. However, in addition to the judges, the Constitution provided for the special institution of public assessors "to take part in the hearing of cases and the pronouncing of sentences" (art. 49). Both the judges and the assessors were to be elected, but the Constitution did not specify how and by whom (art. 50). An office of the Prosecutor General was separately established. The law (art. 53, par. 2) specified that "the Prosecutor General supervises, in particular, the prosecution of offenses endangering the political and social system, security and independence of the Polish People's Republic". A candidate for this office was to be nominated and recalled by the Council of State.

The new interpretation of the law pronounced the "unity of government authority in the people's democracy" (Rybicki et al., 1977:93-99). Therefore, any conflict among the legislative, the executive, and the judicial institutions of the state was ruled out in principle. Marxist constitutional law states that the organs of class-based representation of the people are superior to any other functional organs. They provide direction for the whole activity of the state. While the Montesquiean idea of segregation of power is rejected, the division of competence among state authority and state administration is acknowledged (Jarosz & Zawadzki, 1987: 157-58).

At the same time the language of the 1952 Constitution was very vague, leaving important details to be dealt with by additional legislation. A basic institution of the Supreme Chamber of Control was omitted in this document and regulated outside the basic law (Sylwestrzak, 1986: 99). This situation could be explained as a continuation of already established authoritarian "constitutional practice". The unclear formulation of many provisions made it more convenient for the Communist party (PUWP) to intervene in actual law-making (through the Government), without an obvious challenge to the constitution. In any event, no tribunal was provided at the time for the purpose of legal review of the Sejm legislation or decrees, neither was there any institution which could especially resolve cases of law violations by the state officials. The Sejm theoretically was an ultimate arbiter in such important cases, including the validity of election results (Jarosz & Zawadzki, 1987:389).

The local state government system based on the People's Councils was a continuation from the early years of the communist rule. This time it became formally subordinated to the supervision of the Council of State (art. 27). However, the nature of this "supervision" was not specified. Therefore it was quite easy for the Communist Party to control those local government units from outside of the state government structure. The importance of this

control became clearly visible in the new electoral ordinance.

The 1947 elections were the last ones to be based on the old proportional system of representation and party competition. The new law provided for only one list of candidates, placed on the single "national front" ticket. Officially, there were two other political parties, representing the working intelligentsia (Democratic Alliance-Stronnictwo Demokratyczne - SD) and the peasants (United Peasant Party-Zjednoczone Stronnictwo Ludowe-ZSL). Nevertheless, their candidates and other independents (including Catholic groups) were not allowed to campaign separately. The candidates for a common ballot officially could be proposed by trade unions, women and youth organizations, professional associations, and other such groups. This rule would closely resemble the 1935 ordinance, only this time the ultimate authority belonged not to the state as such, but to a single party. The "state lists" were additionally adopted. Unlike the 1921 ordinance, this time the purpose was not only to make sure that particular people get elected to the Sejm, but also to provide an "ideal representation of a perfectly organized society" (Cekalski & Lityński, 1987:17). In fact, the actual takeover of the democratic idea of election for the purpose of the authoritarian ideology resulted in producing the display of approval for the political system.

A special chapter describing the rights and duties of citizens seemed to have filled the gap created by the Little Constitution of 1947. This was done mostly in accordance with the 1921 charter. However, besides basic individual rights, a new set of economic and social guarantees appeared, such as the right to work (art. 58) and leisure (art. 53). The wording of these laws emphasized that these provisions are "ensured on the increased scale", suggesting a progressive nature of the constitution and the temporary nature of some laws.

The basic divergence between the democratic claims of the 1952 Constitution and the constitutional practice notwithstanding, there were also some discernable authoritarian tendencies in the document itself, the introduction of the Public Prosecutor's Office being only one example. The constitutional separation of the church and the State is another. Art. 70 guaranteed freedom of religion and conscience, but at the same time one clause declared punishment for "the abuse of the freedom of conscience and religion for the purposes prejudicial to the interests of the Polish People's Republic". This was clearly aimed at the privileged position of the Catholic Church and religion. Had it appeared before 1939, such change would have been regarded as a positive move since the previous Polish constitutions awarded this particular religious institution very extensive autonomy and power in the country's cultural and educational

affairs. The dominant position of the Catholic Church threatened the freedom of other religious and non-religious groups and individuals. After 1945, however, Poland became nationally homogenous and overwhelmingly Catholic, which gave little credibility to regime claims that it intended to protect the rights of many other ethnic and religious minorities.

Similarly, as in the 1921 and 1935 Constitutions, the duties of the citizens to the state were included alongside their rights in the new law. Even if only one article (art. 71) at the end of the chapter was devoted to these obligations, the duty to "safeguard and support social property" indicated a basic change of focus. The state protection of private property was replaced by the common responsibility for the state property, regardless of the fact that a limited sphere of individual economic activity was still permissible (art. 10, 12).

The law was surprisingly vague on the question of national emergency. The Council of State could proclaim martial law on the parts or the whole territory, but no clear responsibility for the suspension of individual rights was specified. Also the rules regulating constitutional amendments (art. 91) simply duplicated the 1921 law. Given the new composition of the Sejm, the Communist party could easily introduce constitutional changes.

The overall role of the Communist party in the Polish political system became a focus of constitutional debate during the subsequent years. The main idea was to formally acknowledge the already established practice in the appropriate provisions of the basic law.

NOTES

1. Previously, in the 1920s and 1930s, the Polish state acquired already some significant monopolies in the economic sphere such as, for example, tobacco and the railroads.
2. See Polonsky and Drukier (1980) for the description of the beginnings of communist rule in Poland, 1944-45.
3. For the discussion on the origins of the 1952 Constitution see Rybicki et. al. (1977).
4. This party should not be confused with the pre-1939 PPS. Its pro-communist program repeatedly denounced the ideology of the mainstream Polish Socialists from before World War II.
5. The article numbers in this chapter appear in the order according to the amended version of the 1952 Constitution as published by Triska (1968). In the remaining chapters the article numbers are given according to the new text: Konstytucja PRL, (1987).

CHAPTER IV

THE ROLE OF THE PARTY AND THE DYNAMICS OF CONSTITUTIONAL CHANGE IN COMMUNIST POLAND

The post-World War II developments in Poland created a foundation for the dominant role of the Communist party in the political system. The Polish United Workers Party (PUWP) emerged in 1948 as a result of the forced cooptation of the Polish Socialist Party by the communist Polish Workers Party. The two non-communist political parties still in existence: the United Peasant Party and the Democratic Alliance as well as other independent organizations such as the small Catholic groups, were reduced to the role of "transmission belts" of the PUWP directives to all segments of the Polish society.

The Origins of the PUWP Control in the Polish State

The 1952 Constitution was proclaimed after the PUWP had already achieved its exclusive position in the country's political, social, and economic life. Furthermore, the announcement of the basic law occurred during a period when Polish national sovereignty was at its lowest point during the country's post-war history. Its Stalinist leadership could only be described almost as a virtual agency of the Soviet Union (Weydenthal, 1986:68-69). In his study of the Soviet bloc Brzezinski even suggests that the situation of the whole Eastern Europe at the time was in fact very close

to the actual incorporation of the satellite countries into the Soviet Union as additional member republics. However, the system of ideologically uniform even if (in the Marxist historical sense) less advanced states, appeared as a more convenient way to achieve the same political goals (Brzezinski, 1967:67-71).

The situation of limited national independence was a severe burden on the Polish constitutional scholars who for the sake of legitimation of the party rule had to find a balance between the symbolic significance of traditional, democratic institutions and the influence of the Soviet model. The adoption of the new constitution in Poland was the last episode in the sequence of similar political developments in other East European countries (Appendix 1). The Polish state, and other People's Democracies as well, could not claim equality with the Soviet Union in terms of the already achieved stage of socialist development (Brzezinski, 1967:80). Unlike in the Soviet constitution, the role of the party was not mentioned openly in the original text of the Polish basic law. Art. 1 of the Polish Constitution declared only that "the power belongs to the working people of town and country".

As a transitional document describing only the initial phase of socialist construction the constitution could be interpreted by the party leadership in the context of the long-range goals of its program. At the same time, the legal

significance of the charter as the statement of general rules and procedures, which were binding for the government and universally accepted by the authorities, was greatly reduced. The PUWP, like other communist parties of the bloc, has always claimed that its legitimacy as a leading political force was based on the historical, revolutionary process of change. The rules of the law must then clearly be subordinated to the objective principles of this process. One of the Polish Marxist legal scholars explained this in the following way:

Social regularities cannot be undone, one may only change the rules of the law which contradict them, turning them [the rules of the law] into an authentic, not only illusory directive of the practice (Sokolewicz, 1978: 97).

In the context of the Polish totalitarian state during the 1950s, the Constitution, in its original version, could have appeared as a document almost totally detached both from the practice of government operations and the real social expectations. The former was at the time based mostly on ordinary legislative acts which were not subject to constitutional verification by any independent organs. Also, multiple decrees issued by the Council of State in fact replaced the legislative function of the Sejm (Jarosz & Zawadzki, 1987); (Appendix 2). Since all government branches had become a unified mechanism, the party became the ultimate regulator of their activity, supposedly acting in the name of the working class. As far as the public was concerned, the

constitution and other laws were in practice the means of socializing the population, so that it could utilize the existing institutions and exercise citizens rights only for the purpose of displaying support for the system.

Poland followed the path of other Stalinist countries where the Marxist-Leninist doctrine was interpreted in a way which recognized the state only as a means leading to the achievement of a visionary end of a future socialist society. This period in time was characterized by the decline of importance of the state institutions (Brzezinski, 1967:88-89). This fact had negative social and economic effect but was probably a reflection of the party leadership's belief in the quick success of their program. The use of constitutional practice allowed the party to interpret the legality of their action as they saw fit, according to the ideological directives and the demands of current policy.

During the Stalinist period disregard for the law which the communists themselves had established reached extreme proportions, never again to be repeated in the history of communist Poland. The vigorous campaign of industrial development, social mobilization, and ideological indoctrination created a situation where the institutional structure of the state was perceived as an obstacle on the path to rapid development. The process of authoritative decision making by a very limited group of people who occupied simultaneously party and state positions (Politburo

and the Council of State or the Council of Ministers) dominated all spheres of country's life including education, culture, and religion. The decline in importance of the representative institutions was the most pronounced violation of the Constitution. (Jedruch, 1982:412-15).

The fact that the 1952 Constitution has its origin in the period of the extreme totalitarian dictatorship of the Communist Party (or more precisely its narrow Stalinist leadership) has had a profound influence both on the text of this document and on the problem of regime legitimacy. The document was worded in such a way as to approach the ideal of the Soviet model, even if the same level of development could not be claimed by the Poles having only a few years experience with the new system. At the same time, the Polish party leaders also imitated the political and economic practice of the "first socialist country." This attitude made them ignore the constitution as a legally binding document. The Polish state still existed, but its sovereign legal foundation had been turned upside down, which was to have a long-term effect on the legitimacy of the regime. As the contemporary Polish opposition writers explain: "while taking over the bourgeois state the communists declare that it becomes its own dialectical negation" . "The party becomes identified with the state." (Cekalski & Litynski, 1987:18)

Party Monopoly on State and Social Organization

And the Constitution

The dynamics of constitutional development and change since 1952 has been determined by the periodic reevaluations of the PUWP ideological doctrine and its policies. Poland experienced several important crises in its recent history.¹ They had a profound effect on the party and some time later also the Constitution became influenced by the new methods of rule. The constitutional practice, altered to suit the "new course", usually preceded any debates over the real amendments in the text of the basic law. The discussion over final legal reforms in the state law, even during the most sweeping changes of the 1970s, was officially presented in a manner which concealed the real scope of disagreement. Nevertheless, the Marxist scholars themselves contradicted the image of moral and political unity of the nation by conceding that some "small groups of people" actually opposed constitutional changes proposed by the party. In fact the opposition, especially from the Catholic Church, was widespread enough to force the party to make changes in the original projects for the amendments (Sokolewicz, 1978:27-28).

The Constitution of Poland at each stage of change in the communist political system can be viewed as a reflection of: 1) the ideology of the party, based on the Marxist-Leninist doctrine which stipulates the revolutionary

transformation of society; 2) the interpretation of the doctrine at each stage of Poland's socio-economic development in order to produce officially binding norms of state organization; and 3) the strategy of defending, maintaining and/or expanding the party monopoly of power.

The ideological "superstructure" is expressed in the constitutional articles which describe the so-called fundamentals of the political and socio-economic system. Among these are the articles defining the role of the working class as the leading force ("the principle of the principles"², in Preamble, arts. 1,2,4,8/par.1); the centralization of government (under direction of the parliament (Sejm; art. 20), the nationalization of economy (art. 11, par.2); and since 1976, the leading role of the Polish United Workers Party in society (art. 3).

These basic elements of the political system play a special role in the Constitution. According to the Marxist legal interpretation they cannot be changed, even by amendments passed by the required 2/3 majority of the Sejm (art. 106). This reasoning is based on the premise that the socio-economic forces which operate in agreement with the laws of historical determinism are the superior regulators of the "super-structure", independent of the actual letter of the law. The systemic fundamentals therefore, are "relatively constant", meaning that they themselves determine the direction of basic structural changes, at the same time

denying a possibility of amendments contrary to their spirit (Jarosz & Zawadzki, 1987:72-74).

The most obvious shortcoming of this interpretation is the fact that the precise definition of the systemic fundamentals, expressed in very general terms by the constitutional provisions, is formulated by the extra-legal actor-the Communist party which, officially remaining outside the state structure, is, however, the only and final judge of the socio-economic reality.

The ideology dictates to the communists a necessity to proceed toward an ultimate goal of social development - "the classless society". To declare victory at any given moment in time would undermine the very purpose of the party rule (Appendox 3). Therefore the state organization and the law are necessary aid in the continuous struggle for the realization of those distant ideals. Since the legitimacy of the PUWP leading role in Poland is not derived from either the national tradition or the people's consensus, but rather from the abstract notion of the historical principles of social development, it may appear that the public opinion and the individual citizens cannot become autonomous actors, capable of influencing the functioning of the state. Nevertheless, the first impression might be that the Constitution gives us evidence to the contrary.

In order to properly understand the role of the constitutional guarantees of individual political rights

(arts. 81 par.1; 83-86) it is necessary to consider the ideological interpretation of these provisions by the party. The necessary precondition for the exercise of the political freedoms and rights is not the existence of certain legal protections, based on "natural rights" of individuals. "Higher", extra-constitutional norms such as these are rejected by the Marxist legal scholars in Poland (Jarosz & Zawadzki, 1987:73). The guarantees mentioned in the basic law can be regarded as practically applicable only at a certain stage of social development. The precondition for the exercise of individual rights is usually a factual or assumed elimination of the remains of the former bourgeois state. The process of identification and interpretation of the stages of socialist development has been monopolized by the party apparatus.

The exercise of independent opinion and changes in the internal party regulation are usually the first sign of the future reform in the state structure, the political life as a whole, and eventually, the constitution. However, the priority given to the unity of opinion in the party ranks, which is the core of the communist doctrine, discourages any attempts at independent action, not endorsed by the leadership. Hence the functioning of the state organs is determined by the authoritarian decision-making conducted within the PUWP. The Leninist principle of "democratic centralism" which is the foundation of the party constitution also

affects the decision-making of the communist-controlled state organization. The Polish state, by being an organization of the whole society theoretically is more vulnerable to the legal challenge from the citizens than the party. In reality, however, it serves as a means of fulfilling the party program. In this fashion the organization of citizen participation in the state affairs cannot possess any neutral quality and becomes ideologically determined. An individual can either act in support of socialism or against it, the indifferent majority being either condemned as "creeping enemies" or praised as silent supporters, depending on the current policy directives and a particular interpretation of the Marxist-Leninist dogma (Cekalski & Litynski, 1987:23-28).

During the 1950s, the gradual liquidation of the so-called "exploiting classes" - private businessmen and more affluent landowners - was accompanied by the elimination of all political opposition to the totalitarian rule in Poland. This situation created a political environment in which the constitutional guarantees, no matter how democratic they might have appeared, lost their practical significance. For the communists however, it was a very logical consequence of the revolutionary social transformation, giving democracy its true meaning in a society devoid of antagonistic contradictions (Appendix 3). At the same time, by adopting the bourgeois ideas and the political language of their op-

ponents, the party in practice made them appear totally meaningless. (Cekalski & Litynski, 1987:22).

The Role Of The Party In The Revised Constitution

The 1957 constitutional change following the period of de-Stalinization in Poland was in fact rather modest. The only significant amendment was the new chapter providing for the Supreme Chamber of Control (an institution which had existed before the war and was gradually phased out during the initial years of the communist rule). The Chamber was to be subordinated to the Sejm, the principle which gives this organ an appearance of independence from the state administration, whose activity it was supposed to control (Staar, 1962:36). Actually, the process of reform beginning in October 1956 was characterized by a legitimacy crisis which was only temporarily overcome, but not due to the new emphasis on legality or the revival of the Constitution. The party was greatly aided in its return to full control by the charismatic leadership of its first secretary Gomulka, who was widely supported in society (Cekalski & Litynski, 1987:22) and regarded as a defender of national sovereignty.

Only much later, in 1976, the party proceeded to meet the challenge of a rapidly modernizing society by adjusting the 1952 constitutional model to the new demands of different socio-economic reality. Similarly to the period of early 1950s the constitutional developments were the last formal

step in confirming the party "achievements" in its task of socialist construction. The reform of the state was based on the premise that "moral and political unity of the nation has been already achieved" (Sokolewicz, 1978:77; xzjadz PZPR-Dokumenty i Materialy 1986:145). In this context, emphasis was put on the development of socialist democracy (art. 7), and broadening of citizens' participation in the government (art. 5 par. 2). The constitutional change during the 1970s was unique in a sense that many practices which for a long time had existed outside of the Constitution as established facts of law, often in apparent contradiction to its letter, were finally acknowledged in the text of the basic law. For example, the article ordering judicial elections was substituted by a clause which provided for the selection of the judges by the Council of State (art. 60; former art. 50). Also art. 51 (former art. 42) was changed in 1975 to provide for the direct state executive offices at the level of provincial administration. Long before, the Government actually exercised the local executive functions through the presidia of elective provincial councils.

The 1976 constitutional revision went considerably far with the formulation of more ambitious programmatic statements in the political and socio-economic structural development. All institutional changes connected with the PUWP's new policy of "accelerated development" however, would be much less significant without the new art. 3, proclaiming

"the leading role of the party in society". This provision merely acknowledged a long-established political fact, but at the same time the constitutionalization of the party role greatly expanded the scope of the fundamental principles of the basic law.

Whereas the "rule of the working people" is a very vague statement and could be interpreted in various ways, the new article clearly indicated which force actually sets the pace of social transformation. This development occurred not without the external influences from other Soviet bloc nations which had reformed their Stalinist constitutions long time before Poland did (Jarosz & Zawadzki, 1987:83-90). Also the internal political and economic situation was not proceeding in the manner the communists have envisioned. There was a growing demand for new party policies and the laws had to be adjusted accordingly.

The PUWP was aware of the fact that modernization and rapid economic growth caused rising expectations among the population. Rising consumption demands became a major issue of economic development during the leadership of the first secretary Edward Gierek (Mieczkowski, 1979). The party could ill afford to meet both the economic and political needs of the society if this would threaten its own power. The solution which emerged in the 1970s not only took the extensive economic growth for granted, thus neglecting the negative impact of industrial over-investment, but also

helped the party strengthen its position as the source of authoritarian decision-making in all spheres of life. The proposed, expanded organization of citizens participation that included new emphasis on the role of provincial councils as the local self-government units³, constitutionalization of the Front of National Unity (art. 3, pars.2&3), and the special emphasis of the role of the trade unions (art. 85) can only be viewed in the context of the PUWP's leading role.

Instead of acting through a more rigid and vertically structured mechanism of directing the state and social affairs, the party cadres were to become the leading actors in the process of "developing socialist democracy" (art. 7). For example, the provincial party secretaries in most cases automatically became the presidents of the supposedly self-governing local councils (Sokolewicz, 1978:149). Thus the constitutional role of the local self-governing bodies was undermined since the party members who headed them were subordinated to the centralized hierarchical authority which in fact denied political autonomy to the local actors.

The new state of socialist development proclaimed in Poland' under the Gierek regime and codified in the constitutional amendments was a natural consequence of the process of evolutionary change in the basic laws of other communist countries. The leading or directing role of the Communist Party was written into the Constitution of Albania in 1946 (art. 56), Rumania in 1965 (art. 3), Czechoslovakia in 1960

(art. 4) and Bulgaria in 1971 (art. 7). The Soviet Constitution of 1936 in art. 126 already declared that "the Communist party of the Soviet Union is the directing core of all organizations of the working people, social and government ones." The new 1977 Soviet Constitution, proclaiming the establishment of a developed socialist society, remained ideologically ahead of the other bloc nations. In terms of the Marxist-Leninist doctrine, Poland, still nominally a people's Democracy, while formally incorporating the party role into the basic law continued to lag behind its socialist allies.

The new constitutional position of the party in Poland was a belated attempt to match the similar provisions in the laws of the fellow communist countries. The adoption of this amendment took place in the atmosphere of strong opposition from independent social groups (Sokolewicz, 1978:28). The Polish Constitution differs from the basic laws of other Soviet bloc nations (with an exception of the Hungarian charter) by the fact that in art. 3 it proclaims only the leading role of the PUWP in society, not in the state. The state is nominally directed by a coalition of parties which collaborate within the framework of a national front. The existence of the Front of National Unity in the 1970s was constitutionally confirmed in 1976 (art. 3, pars. 2 & 3). The function of this umbrella organization which, in an altered form, has survived until today was designed to

involve more than just the two coalition parties: the United Peasant Party and the Democratic Alliance, but also a number of officially sponsored organizations, trade unions, pro-government religious groups etc. Such structure serves as a useful mechanism through which the party can exercise its control over the political process, being able to show at the same time that it shares the power with other non-communist groups. Polish independent political analysts point out that the party attempts to organize society and the state in a manner making it possible for a single political force to simultaneously exercise the roles of the creator of all state institutions, the major decision maker, the controller of state activity and the evaluator of policy results and administration procedures (Cekalski & Litynski, 1987:17).

Political Crisis In The 1980s And The Affirmation Of The PUWP's Leading Role in Society

In the early 1980s the PUWP found itself in a very precarious situation, facing the collapse of its economic policies and a severe political crisis. The communist rule was challenged by the unprecedented wave of social protests and the necessity to preserve power overshadowed any other immediate concern of the party. The first big clash with the Solidarity movement occurred as a result of the authorities' demand that the independent union leaders officially

recognize the constitutional role of the PUWP (Holzer, 1982:119).

Changes in the constitution eventually became a means by which the new Jaruzelski regime attempted to both, legalize new emergency prerogatives of the government, and regain some measure of legitimacy for the compromised state authority. Immediately after the declaration of the martial law the very vague article art. 33 regulating special government powers was changed to suit the purposes of the military dominated regime. Under the old law, the Sejm approval, if the parliament was in session, had to be obtained before the martial law declaration on the territory of the whole country. On December 13, 1981 the Council of State ignored this procedure. Later, some Polish constitutional scholars, using a rather voluntary interpretation of the basic law and the International Covenant on Political and Civil Rights, insisted that it was entitled to do so. Jarosz and Zawadzki point out in their argument that since the Council of State was confronted with a lack of constitutional regulation in case of an internal emergency and the absence of legislation pertaining to such situation, it was forced to use the term "martial law" and issue a special decree more suited to the circumstances (1987:289). Again, the phenomenon of constitutional practice became the driving force of the state law, leaving the actual text of the charter behind. Finally, in July 1983 the Sejm passed an

amendment to the Constitution (art. 33, par. 4) which specified the possibility of announcing a state of emergency on the whole territory of the country or on its part. The new law strengthened the power of the President of the Council of State enabling him to issue emergency orders in cases when no delay is permissible.

Simultaneously, two new institutions which were designed to oversee the legality of the official government action and the constitutionality of the legislation were introduced into the basic law. Constitutional Tribunal, created in 1982, was intended to replace the Council of State in its function of "guarding the constitutionality of the law" (art. 30, par.3 -passed in 1976, eliminated in 1982). This function actually had no practical significance in the activity of the Council (Jarosz & Zawadzki, 1987:78). Establishment of another body, the Tribunal of State signaled a return to the former model of overseeing the action of government officials, already present in the pre-war Polish constitutions. The Tribunals were not entitled to rule on the pre-1982 legislation and other political decisions of the regime'. Their creation was a part of the new regime policy of expanding socialist democracy.⁴ Ironically, the timing of these reforms when major citizens' rights were suspended and all opposition groups had been violently crushed, did little to convince the population that from now on the government would adhere to the principles of legality. The new regula-

tions were first of all devised for the purpose of preventing another outburst of workers' discontent in the future. (Cekalski & Litynski, 1987:14).

The scope and intensity of legislative activity and law-making in general was quite overwhelming during the martial law (Appendix 2). This situation indicated not only a desire to eliminate those legal principles which during the period of Solidarity began to function in reality as restrictions on the PUWP monopoly (Cekalski & Litynski, 1987:14). It also signalled the party leadership's intention to build a new foundation of its power in the precarious environment of social and political unrest, as well as in view of the disastrous economic conditions.

The new interpretation of the socio-economic reality was a natural consequence of the pattern of socialist renewal within the party itself. The constitutional reflection of this development did not follow the pattern of multiple institutional and programmatic amendments as it was the case in 1976. Only a few alternations were made, which was quite insignificant if we consider the social and political impact of the recent Polish crisis. One of these changes was the replacement of the Front of National Unity (art. 3, par.2) by the Patriotic Movement for National Rebirth (PRON). The very term "rebirth" is indicative of the new course proclaimed by the party leadership. The founders of the movement stressed the more democratic character of the

official ruling coalition of parties and other organizations and in contrast to the previous system the inclusion of non-party private citizens in its ranks was made possible. The previous proclamation declaring the moral and political unity of the Polish nation was officially abandoned while the regime's policy of national rebirth became a new credo, welcoming ideological diversity, but demanding political unity. (Jarosz & Zawadzki, 1987: 139)

The significance of the constitutional changes as far as the "democratization" of the government is concerned cannot be overestimated. The replacement of one "umbrella organization" by another does not mean that the PUWP ceased to exercise its leading role in society. What this reform really indicates is the need to regain some measure of support, (among the intellectual elite as well as the population as a whole), further undermined by the declaration of martial law. The preconditions for participation in the movement are much less demanding now. The party welcomes access of all who do not actively condemn the communist rule and declare their obedience to the laws and the Constitution (X Zjazd PZPR-Dokumenty i Materiały, 1986:184). The new institutional solutions become once again a means to the practical realization of what Cekalski and Litynski call "the rule of non-ideological support" (1987: 36-39). This rule can be applied to the intra-party politics as well as the whole structure of state organization where the political

leadership will not tolerate any alternative programs either from the right or from the left.

The new ideological interpretation of the Polish situation was expressed in a more comprehensive way during the PUWP's 10th Congress in 1986. General Jaruzelski in his speech at the Congress called for a sweeping constitutional reform in the nearest future (X Zjazd PZPR:80). This declaration was later interpreted in the media and legal journals as a desire to introduce an all new charter (Kubiak, 1987).

If the party proceeds with its plans, we will witness another example of a similar pattern when the constitutional change becomes the ultimate reflection of the political and socio-economic reality, as defined by the party according to its new interpretation of Marxist-Leninist ideology. This interpretation will have to acknowledge the lack of political and social unity in the Polish society as a permanent feature of the system. The methods of party interference in the state affairs and their legal implications, including constitutional amendments, will most probably change but the overall impact of the PUWP on policy-making is not likely to decline. It remains to be seen whether the reforms within the party are significant and influential enough to bring about a meaningful constitutional reform, making way for increased political pluralism.

A Search For New Legitimacy

The important question that should be asked at this point is whether or not the party can ever succeed in overcoming the permanent legitimacy crisis of its rule, the crisis which the PUWP tried to deny by introducing the new art. 3 into the Polish Constitution in 1976 (the leading role of the PUWP in society). The legitimation of state authority in the communist systems can be described as derived from the ideologically determined leading role of the party and "the principle of popular sovereignty" (Brunner, 1982:32-33). The instrumental character of the state in a system dominated by one party often leads to the disregard for the autonomous role of the people. Georg Brunner points out that the doctrine of the "working people sovereignty" [emphasis added] helps the communists to bridge the gap between what he calls "the heteronomous-teleological legitimation" and "autonomous-consensual legitimation" (32-34). The privileged position of the working class, referred to by the Polish constitutional scholars as the "principle of the principles" (Jarosz & Zawadzki, 1987:121-122), and, as a consequence, the leading role of its avanguard-the party is justified, since only this class is capable of directing the process of socio-economic change. The party is justified in assuming political leadership for as the working class representative it possesses "higher consciousness" of the historical processes (Brunner, 1982:34).

Since the monopoly of the party on choosing the right political course is not open to challenge, all branches of state government are expected to act in unity on the realization of PUWP policies. The doctrine rejects a possibility of conflict within the government. It is a consequence of the assumption that unlike the bourgeois society, the socialist one has overcome the antagonistic contradictions and hence has no need for the free play of political forces, [emphasis added] either in the party, the government, or the society at large (Jarosz & Zawadzki, 1987:130-134).

The rejection of conflict as a legitimate phenomenon cannot obscure the reality which produces constant confrontation, either on the smaller scale in day to day decision-making or in the wider sphere of open political opposition to the party policies, and most importantly to the very fundamentals of its rule (like for example during 1980-81). Some constitutional changes since 1952 have originated from a necessity to find such substitutes for conflict resolution mechanisms which would both neutralize the opposition and help maintain the monopoly of party control.

The Marxist-Leninist ideology notwithstanding, the rejection of conflict among political forces within the government and in the society at large is linked to the power factor. The free play of political forces would very well, in a country with its own democratic traditions such as

poland, lead to a situation where the Communists become only a small and insignificant minority party. The revolutionary nature of the PUWP system of rule makes it impossible to overcome the dialectical distinction between only two recognizable political forces-"the enemies and the allies". By denying legitimacy to "the enemies" the regime renders all constitutional guarantees of political freedoms obsolete. Unable to deny that unity has not been achieved in the Polish society yet (Jarosz & Zawadzki, 1987:139; Appendix 3), the party attempts to better organize all social groups as ideologically neutral, but supportive "allies". Similarly, within the government the new institutional changes serve the purpose of enhancing self-control of the centralized structure, officially headed by the Sejm (the two Tribunals), rather than granting autonomy to any of the branches. The methods and the extent of such control are determined by the PUWP apparatus which can choose between exercising political pressure through its government representation (in the legislative, the executive and judicial institutions) or by utilizing the so-called institutions of social control (Workers and Peasants Control, People's Assessors in the Courts, local and industrial self-government, etc.).

The constitution is a document where the most important elements of the party program are revealed in a form which includes both the programmatic outline of a conflict-free society and the institutionalization of those

contradictions which still exist in Poland and have to be reckoned with at the present level of development. Without openly admitting the existence of political, social and economic conflicts the party usually chooses either to ignore them (as in the 1970s) or to define them in such a way as to justify them as transitional phenomena, caused either by the political enemies or by the mistakes of the previous, denounced leadership (1980s).

In the text of the constitution, the problem of political conflict has been dealt with in two ways; either by tacit institutional adjustments behind the screen of a unified governmental structure or by open admission that some long lasting features of the present Polish reality need to be recognized. The former serve to perpetuate the existing model of authoritarian decision-making, the increased possibilities of self-control notwithstanding. The latter concerns the social and economic spheres and is the official admission of the fact that the conditions in Poland have so far failed to evolve according to the socialist model (Jarosz & Zawadzki, 1987:104-105). The process of institutional adjustment within the government structure in Poland is linked to the concept of socialist democracy, the term being a derivative of the narrower principle of democratic centralism.

Socialist Democracy And Evolution Of The Party Rule

The concept of a democratic state in the Leninist doctrine acquires a rather ambiguous meaning. On one hand, democracy is a bourgeois phenomenon, which will eventually become irrelevant in a future communist society (Lenin, 1987:55). On the other, the party of the working people is capable of transforming a state of bourgeois democracy into a state of the true, working people's democracy. This apparent contradiction is present not only in the ideological sphere, but occurs in reality of actual state activity in communist ruled Poland. The PUWP, in its direction of the state apparatus, is at least formally obliged to adopt some institutional procedures in order to legitimize its claim for a "higher" form of democracy. Simultaneously, the actual demands of the state bureaucracy, which has become used to following only party directives, make it very hard for any reformer to hold the officials accountable, even to the communist controlled representative institutions of the government.

Should the quasi-democratic constitutional mechanism of working people rule prove too vague or inadequate to the functioning of the PUWP dominated state organs, the officially recognized constitutional practice allows for law modifications through ordinary legislation and executive action without too frequent recourse to constitutional amendments. Still, some constitutional scholars complain

that such provisions as art. 106 of the basic law are not enough guarantee to avoid frequent amendments since basic political agreement is an undeniable fact in "socialist" parliaments (Jarosz & Zawadzki, 1987:71). Recent developments in this area have shown a tendency toward greater precision of the basic law, which would eliminate the necessity of constant review or legal contradictions in actual constitutional practice. Nevertheless, despite the creation of the Constitutional Tribunal the extra-constitutional, voluntary interpretation of the basic law is still a common phenomenon in Poland.⁵

The state and society under communist rule can fulfill their instrumental roles only if their organization can be made compatible with the officially permissible methods of pursuing the goals of socialist construction. The vague nature of the original Polish 1952 Constitution was partly due to the fact that the transformation of the society could not have been undertaken the way the party intended it to happen if the state apparatus had been bound by too many restrictions.

' Ever since the collapse of the Stalinist dictatorship the Polish communists have become more aware of the fact that their successful rule depended on a more flexible organization of the state and society in general.

The evolution away from the totalitarian police state towards an authoritarian one-party regime involved such

elements as; 1) a more precise division of responsibilities between the party and the state in governing the country; 2) the participation of the citizens in the process of governing connected with a better organization of public support for new policies; 3) an acknowledgment of the fact that certain divergencies from the model of socialist development do exist and class antagonisms are likely to survive longer than previously expected; 4) connected with the previous point is the recognition of the Polish way to socialism (not without influence from the USSR after the famous 20th Congress of the CPSU), and the emphasis on Polish national symbolism.

In consequence of the most important crises after 1956, during the 1970s, and later in the 1980s, the above factors were included in the constitutional debate sponsored by the ruling party elites. However, the eventual amendments to the charter which followed turned out to be either too controversial (the proposed clause about the eternal friendship with the Soviet Union, discussed in 1976), or practically insignificant (the 1957 introduction of the Supreme Chamber of Control), and in most cases they came too late to make the difference and help prevent a serious political crisis (both Tribunals after 1981).

The key to understanding those periodic attempts at constitutional reform lies, apart from the ideological consideration, in the party strategy and its ability to utilize institutional and organizational solutions in a

manner which could satisfy popular discontent with previous policies and deceive the opposition during a legitimacy crisis. At the same time, the party domination has to be preserved in all areas of social activity.

The ability to adopt certain democratic concepts as their own enable the Polish United Workers Party to project a more credible image of the reformed methods of rule. At the same time, the doctrine of the communist movement remains in force and as such helps turn the reforms into their own negation.

From our analysis the PUWP emerges as the political organization which struggles both to preserve its ideological unity and undisputed monopoly of power, especially during periods of political and economic crisis. Constitutional changes appear in this context as somewhat belated attempts to legalize the consequences of the already accepted directives, derived from new party programs. The dynamics of constitutional change, however, can also be viewed as a result of a more complex, gradual process of one-party regime evolution in Poland.

In his study of authoritarian politics, Samuel P. Huntington concentrates on the evolutionary aspects of one-party rule. He recognizes three stages of this process: transformation, consolidation and adoption. Modernization of society leads to the transformation of a "revolutionary one-party system" into an "exclusionary one-party system". It

usually occurs when the social and political opposition to the authoritarian rule have been eliminated. Ideology serves the legitimation purposes of the new regime, whereas the party membership, expanded during initial revolutionary phase, is purged (Huntington & Moore et al. 1970:15-23). This process corresponds to the situation in Poland during the 1950s when the constitution went into effect, but its programmatic, ideologically determined significance overshadowed its legal meaning as the supreme law.

The consolidation of one-party rule is characterized by a declining need for ideology. The party has already established its monopoly of power and now begins to seek justification of its rule in "institutional rather than ideological characteristics" (27-28). After 1956, the PUWP in Poland consolidated its rule, but mainly on the basis of its popular leader Gomulka and the hopes associated with the emergence of reformist groups within the party. The constitution was only marginally affected, but the new electoral ordinance of 1957 added to the expectations of major institutional reform (Staar, 1962:60). Throughout the 1960s, the consolidation of the authoritarian party rule was marked by the regime's "downplaying of its own ideology and everyone else's" (Huntington and Moore et al., 1970:28-29). The actual constitutional practice of that period led to decline of representative institutions (Appendix 2) as well

as political and economic stagnation (Weydenthal, 1986:122-146).

The adaptation phase, Huntington points out, means further "erosion of ideology", which process "tends to reduce the difference between political needs as seen by the party elite and technical-administrative needs endorsed by the managerial specialists" (Huntington & Moore et al. 1970:33). At the same time, "the fundamental identity between the populace and the system tends to be assumed" (38). The constitutional changes of 1976 in Poland could be seen as a result of this evolutionary phase of one-party rule. Nevertheless, the falsity of this projected image of national political unity became obvious during the 1980s when the PUWP all but collapsed under the social pressure.

Huntington argues that "a reasonably stable and effective authoritarian system may exist with only a weak party". He adds that "when such regime confronts crises the party tends to reemerge as the most important actor" (9). What happened in Poland during the 1980s cannot exactly be explained by this reasoning alone. The ultimate solution to the Polish crisis in 1981 was conceived by the security and military apparatus with close cooperation with the Soviet commanders of the Warsaw pact. At that time the party control and authority in the country was at its lowest and the Politburo's directing role was replaced by Jaruzelski's strategic command.⁶

In the period of 1982-1986 the Jaruzelski regime tried to turn the rebuilt PUWP again into the most important actor in the process of national renewal and democratization. However, already at this point, the fact that in order to secure greater effectiveness of the new regime in all spheres it is necessary to reduce the party monopoly has been recognized.⁷ The future will show whether a reformed constitution will recognize the increased role of non-party groups and individuals in the state. So far it becomes increasingly evident from the officially published discussions that the needs of party leadership in the ongoing process of reform come to conflict with those of the modernizing society.

The constitutional changes which already took place during the 1980s, and others expected in a few years, are intended to put more emphasis on the legal aspect of state organization (Constitutional Tribunal, Tribunal of State) and stress the renewed attempt at building a seemingly coalition-like system of rule (Patriotic Movement for National Rebirth). However, only the practical adaptation of the party to the new demands of political and socio-economic situation, plagued by socio-economic stagnation and political apathy, can bring meaningful change.

The final adoption of a new constitution can be expected to take place as a result of institutional and legal experiments the PUWP is trying out at present during its

efforts to overcome the loss of ideological appeal and political influence among the population. It is doubtful that the process of change of the authoritarian party rule in Poland can be stopped or reversed in the nearest future. During the 1970s the adaptation of authoritarian decision-making to the rapidly modernizing society appeared realistic in the context of promising economic results. In contrast, in the 1980s there is no doubt about the gravity of the situation.

The constant legal and political debate in the Polish media is a sign of change, but also of political instability. Encouraged by Gorbachev's reforms, but faced with lack of popular support, the regime appears unable to find a working solution out of the stagnation. Even if the PUWP leadership comes forward with a substantial institutional reform package, the fundamental, constitutional foundations of the system are not likely to be affected. On the other hand, the programmatic role of the constitution can only be enhanced, but oriented towards the more immediate goals of the socialist, democratic renewal instead of the more optimistic and more distant goals of a mature socialist society.

The national character of the Constitution, including the emphasis on the specific Polish features of the socialist economy and a creation of a broader base for citizen participation in state affairs, seem to be crucial elements of the present reform. These elements are also connected

with the official recognition of the important role, which the Catholic church has come to play in Polish society.

The next chapter will analyze the genesis and development of certain tendencies in the Polish basic law which correspond to the specific domestic conditions. Despite its monopoly on policy-making the PUWP is forced to take these factors into account in its program formulation process and the approval of certain constitutional amendments

NOTES

1. The most important crises in Poland's recent history occurred in : October, 1956, March 1968, December 1970, June 1976, and most recently during the period of "Solidarity" from August 1980 until December 13, 1981, (when the martial law was declared).
2. For a more detailed discussion of this concept see Jarosz and Zawadzki (1987:112-122).
3. Article 43 changed former article 34 which labeled the provincial People's Councils as mere organs of state administration.
4. See Jaruzelski's speech before the Sejm on January 25, 1982 in Jaruzelski (1985:41).
5. See "Opinie", Lukaszczuk, L. vice-president of the Constitutional Tribunal, in Polityka, No 18, 1988.
6. For details see an interview with Ryszard Kukliński, a member of the general staff of the Polish Army, in Kultura (Paris) No 4, 1987.
7. See: An interview with Swiderski, J., director of the PUWP Central Committee's Department of Personnel Policy, "Na szachownicy", in Polityka, No 20, 1988.

CHAPTER V

THE INDIGENOUS CHARACTERISTICS OF THE POLISH PEOPLE'S REPUBLIC AND THEIR REFLECTION IN THE CONSTITUTION

The Marxist-Leninist ideology of the ruling Communist party in Poland determines the long-time role of the constitution in that country. The dynamic nature of the basic law is represented by its programmatic content, adhering to the basic line of the party's doctrine of progress towards a future ideal society. Any changes in the text, therefore, are expected to be a part of the ideologically mandated process of socialist development.

From 1947 until the mid-1950s, the Soviet Union was accepted throughout the Eastern bloc of communist countries as an ideal model of "socialist" state organization. During the 1950s the Polish regime attempted both legal and extra-legal methods in order to bring about the transformation of the Polish society in accordance with the Stalinist pattern. The political crisis of 1956, which took place within the PZPR and stirred the Polish society, revealed the futility of such policies. It became clear that certain specifics of Polish political and socio-economic conditions cannot be overlooked if the communists wanted to realize their program and gain at least some measure of popular following.

The decline of Stalinism in Poland disclosed amazing ineffectiveness of the party and state apparatus in their

struggle against traditional Polish social and economic forces. The Catholic church reemerged from the period of severe prosecution during the early 1950s as a strong, independent partner in negotiations with the new party leadership. Also the abandonment of the collectivisation campaign proved the strength of the Polish peasants and their traditional bond with private land ownership.

Another phenomenon of the Polish reality which had to be dealt with by the communists was the existence of political opponents of the regime. The devastating influence of World War II and the subsequent policy of terror and intimidation, conducted by the Soviet-supported authorities, led either to the complete elimination of independent political organizations or to the incorporation of some decimated and reorganized non-communist groups into the official network of state controlled associations. Under the totalitarian rule, the party directives were to be unanimously accepted by all quasi-independent political groups. Their existence served mainly legitimation purposes. They were useful to the communists in so much as they could demonstrate effective support for the system, supposedly in the name of all classes, professions, and religions.

The acknowledgement of specific Polish conditions has never been clearly formulated in the basic law, leaving many legal problems to be resolved by means of ordinary legisla-

tion and decrees within the constitutional practice defined by the current party policy.

The post-World War II history of Poland gives us evidence that the problem of incompatibility between the forcibly imposed communist model of rule and the indigenous Polish conditions cannot be resolved within the narrowly conceived doctrine of Marxism-Leninism. The daily practice of governing and the strength of both the traditional and the newly emerged political and socio-economic forces caused frequent readjustments in the party programs according to the demands of Polish reality. These events eventually affected the Constitution. It has to be added, however, that in most cases the perception of social and economic reality by the party leadership did not correspond to the needs and expectations of various interests and groups among the Polish population. The programmatic assumptions and the general institutional framework of the state basic law remained unchanged until 1976, despite the pressures of the rapidly changing society.

The constitutional regulation of the three most important surviving elements of the Polish reality which do not conform to the Marxist-Leninist doctrine of building socialism has been handled in different ways by the party leadership. These elements include: the strong Catholic Church, a tradition of individual freedom and political pluralism, and the private ownership in agriculture.

The separation of church and state (art. 82 par. 2; former art. 70 par.2) was meant to deny the Catholic religion a privileged position it enjoyed in Poland before the war under the 1921 and 1935 constitutions. Even if the religious freedoms were guaranteed (art. 82 par.1 ; former art. 70 par.1) the situation of the Church as an institution was left out from constitutional regulation to be dealt with by ordinary legislation and administrative decisions.

Along with the rejection of ideological pluralism the need for political pluralism in a western bourgeois sense of parliamentary democracy was rejected by the communists. Nevertheless, certain nonantagonistic class differences and interests were recognized within the common framework of a socialist state. A national front was created in the form of a coalition of friendly parties, as well as the social, professional and religious organizations. Also direct forms of citizen participation were promoted as the "rule of the working people", guided by the party.

The existence of the national front, including the two additional political parties: the United Peasant Party and the Democratic Alliance, was not specified in the Constitution until 1976. In the 1970s a greater constitutional role was granted to other organizations such as the trade unions. During the 1980s, largely as a result of social pressure, the new movement for "national rebirth" (PRON) was conceived to incorporate a slightly wider spectrum of individuals and

groups, not directly associated with the PUWP (art. 3 par. 3).

In the late 1950s, in place of the old opposition, practically non-existent since 1948, new political forces emerged, determined to challenge the regime from within. Three separate sources of political dissent, which became evident after 1956, can be distinguished. One of them was a so-called "revisionist" group within the PUWP itself, represented among others also by disillusioned former stalinists. Also, a spontaneous workers rebellion against deteriorating living conditions and human rights violations exemplified by the June 1956 Poznan revolt turned out to be another danger to the party totalitarian rule. Last but not least, a group of Catholic intellectuals, close to the episcopate, attempted to organize some type of legal political opposition in the Polish parliament - the Sejm.

All these expressions of dissent had one common characteristic - they aimed at the reform of the system, not its destruction. They unanimously accepted the realities of Polish geopolitical situation and the post-Yalta European status quo. The 1952 Constitution was recognized as a foundation of their activity.

In contrast to the Catholic Church and the political opposition, the agricultural structure was a subject of a more detailed constitutional regulation from the beginning. However, the early guarantees for individual farmers were

largely offset by the statement of long-term goals indicating the socialist transformation of the villages. While recognizing the importance of private farming, the regime failed to secure necessary guarantees for the peasants either in 1952 or later during the 1976 constitutional changes. Only in 1983 a constitutional amendment finally recognized the individual family farm as a "lasting [emphasis added] element of the socio-economic structure in Poland".

Constitutional Position of the Catholic Church in Poland

As an overwhelmingly Catholic country with a long tradition of Church's influence in the national affairs, Poland occupies a special place among the East European countries. Since the beginnings of their rule, the Polish communists were faced with a difficult situation where they had to deal with the Catholic Church as a significant social and political force. A very immediate need of the new regime after 1944 seizure of power was to determine the role of religious institutions in the Polish state. The crucial factor of that Polish reality in the late 1940s was the difference between the apparent and the actual power of the Catholic Church.

Weakened by the war losses and deprived of the special legal protection provided by the previous 1921 and 1935 constitutions, the Church could have appeared vulnerable to political pressure. On the other hand, its traditional

authority and following in the Polish society could hardly be ignored. The new regime initially promised religious tolerance, restrained from confiscating Church property during the early days of agricultural reform, and expressed hopes for cooperation with the clergy and the believers in building Poland's future (Szajkowski, 1983:9; Markiewicz, 1984:56). Thanks to its continuous authority among the population and the cautious but firm strategy of its leaders, the Catholic Church managed to preserve its integrity and strength throughout the Stalinist period.

In its attempt to undermine the role of the Church in the Polish society the PUWP conceived several political moves. The first important step was a denial of constitutional guarantees both to the Church as an institution, and especially to the Catholic majority in Poland. In September 1945, the provisional Warsaw government moved to break the 1925 concordat between the Polish state and the Vatican. Since then the Communist party has been consistent in using several other methods intended to undermine the influence of the Church.

While guaranteeing freedom of conscience and religion to every citizen, the 1952 Constitution stressed the separation of church and state (art. 70 ; now art. 82). The new regime, by assuming a role of a modernizing force in society, undertook a vigorous secularization campaign in this predominantly Catholic nation. The party justified this

action not only by emphasizing the demands of a modern state, but also the necessity to protect the "equal" status for other minority religions has always been stressed (Markiewicz, 1984:110).

After 1945, when national and religious minorities in Poland constituted only a very small percent of the population, such argument does not appear convincing. Given the hostility of the Marxist-Leninist doctrine to all religions it is hard to imagine the communists acting as mediators between different religious groups. Quite visibly at the time, all legal regulations of the Church's status were subordinated to the demands of an atheistic, Communist-party ruled state.

In effect, the permanent consequence of the 1952 constitutional solution has been a formal declaration of equality for both believers and non-believers and an open denial of any institutional legal recognition for the Catholic Church. Under other circumstances, this situation might not have appeared very alarming, but the reality of Polish socialist law denied the Church a status of a legal body. Therefore, this religious institution could not rely on independent judicial protection against administrative decisions, used frequently in the party struggle against the clergy (Szajkowski, 1983: Notes 17:25). The regime was aided in their action also by art. 70 par.3 of the Constitution which stated that the use of religious freedom contrary to

the interests of the Polish People's Republic was punishable by law. In the atmosphere of "intensified class struggle" during the 1950s any activity of the Church leaders and the clergy could be interpreted as harmful to the interests of the Polish state. During the period of severe prosecution in 1953-55 several prominent church leaders, including the Polish Primate Cardinal Stefan Wyszyński, were imprisoned by the authorities.

The position of the Church and Catholic religion in the Polish post-war constitutional order has been determined by the communist regime's failure to regulate the legal status of this largest religious body. However, repeated attempts were made to define more precisely the role of the believers in the state and society, including their participation in the officially recognized organizations.

As the Church-state relations in Poland evolved from the early stage of confrontation until the most recent period of normalization, the official interpretation of the constitutional norms pertaining to these relations changed accordingly. Due to the denial of legal status, the Catholic Church as such is not referred to explicitly by the 1952 Constitution. On the other hand, Polish constitutional practice may serve as an illustration of the changing interpretation of the Church's role by the party leaders, who have often tried to reconcile the atheist Marxist-Leninist doctrine with the domestic social conditions.

The separation of Church and state has always formed a basis for the Communist party policy towards religion in Poland. (art. 82 par. 2; former art. 70 par.2). Freedom of religion is formally guaranteed by art. 82 par.1 (former art. 70 par.1). Equal rights for all believers and non-believers are provided in art. 67 par.2 and art. 81 par.1. Art. 95 refers to the voting rights which are granted to everyone, whatever his or her beliefs may be.

In 1976, a few important changes were made in the basic law. This could have left some impression that the communist rulers of Poland had come to recognize, in some way, the lasting presence of the Church and its followers in society. The paragraph 3 of the former art. 70, providing for legal punishment in case of misuse of religious freedom, was eliminated from the text. New art. 67, which stressed the progressive nature of citizens rights and freedoms in Poland, now includes a statement of equal rights without regard to sex, birth, education, profession, nationality, race, class origin, social status and religion.

Despite the improving atmosphere in Church-state relations, the constitutional role the Catholic clergy, the believers, and their organizations were to play vis-à-vis the Polish state has been a subject of various conflicting interpretations. While trying to analyze the communist position, as expressed by the PUWP and its leaders, one cannot fail to notice numerous contradictions, most notably,

in regard to the fundamental principle of division between Church and state.

There is little doubt that the communists wanted to avoid the return of a powerful Catholic Church as an independent institution with a pre-war legal status and prestige. At the same time, however, this religious institution had always been an essential element of the social reality and its cooperation or at least friendly neutrality had to be won in order to successfully complete any program of social and economic transformation.

Before the actual 1952 Constitution was passed, the party leadership had abstained from an open attack on the Church. Instead it tried to damage the link between the Polish episcopate and the Vatican. In addition to breaking the concordate, the authorities proceeded to set up splinter groups of "patriotic priests" among the clergy and organize pro-government groups of "progressive Catholics" (for example the PAX association). Such maneuvers have remained a vital part of the party strategy until today.

The official standpoint of the communist authorities on the issue of church-state relations is expressed by a Polish author Stanislaw Markiewicz. He points out that "the principle of separation between Church and state cannot be treated inflexibly" (Markiewicz, 1984:244). Such attitude stems from the partial and informal recognition of the Church's social role in Poland by the state. The Catholic

church is the numerically largest of all religious denominations. While it has always strived for legal recognition and meaningful partnership with the state in solving the country's social problems, the communists also frequently used other, legally recognized representations of minority religions to counterbalance the influence of the Church.¹

The manipulation of the principle of religious equality serves the political aims of the party and the state which recognized legal status of the minority Christian groups, while denying the same privilege to the Catholic Church. Lack of constitutional regulation in the sphere of important relations between the Catholic majority and their Church leaders, on one side, and the atheistic state and the party leadership, on the other, led to the creation of a legal vacuum. This gap has been gradually filled with various settlements creating a *modus vivendi*.²

Despite minor changes in 1976, the communists never openly admitted that the 1952 Constitution with its programmatic vision of a classless, conflict-free society, failed to acknowledge the existence of the basic ideological contradiction in the Polish society: between the majority Catholics and the Marxist minority. In the 1970s, the party leaders grew even more convinced that a socialist state can be created on the basis of national unity, consisting of Marxists and progressive Catholics joined together by their common moral and political goals. This assumption proved to

be a gross oversimplification of the Polish reality. Most recently, the Marxist writers themselves reject such claims as unrealistic. The contemporary official interpretation of this ideological division is leaning towards a negotiated truce, respecting the constitutional foundations of the Polish state (Markiewicz, 1984:119-200 & 212).

Markiewicz, quoting the classifications published by the Polish minister for religious affairs, Adam Lopatka, explains seven fundamental principles regarding the constitutional position of the Church and religion in the People's Republic of Poland. The first one pertains to the equality of rights and duties of all citizens in spite of their religion or beliefs. Second is the rule designating freedom of conscience and religion a private matter of each human being. The third principle allows for the free exercise of religious functions by churches and religious groups. The fourth one deals with religious tolerance: "it is illegal to force someone not to attend or participate in religious ceremonies; and to compel a person to do it" (Markiewicz, 1984:110). The next principle concerns the separation of Church and state. The Polish Marxist scholars attribute to this the elimination of religious symbols and rituals from the public life (secularization of state institutions). The additional rule regulates the legal status of the Church. It must be dealt with only by the Polish law. Therefore, any concordate with the Vatican is excluded because "it would

violate national sovereignty". Finally, the state guarantees equality for all religious groups regardless of their name, or the number of believers (Markiewicz, 1984:110-111).

From the above classification we can distinguish some basic facts which are characteristic of the constitutional regulation of religious affairs in most communist countries, including the USSR. This concerns primarily the separation of Church and state. In this context under the socialist law the state is empowered to deny autonomy to any religious institutions. Also the state protection is especially extended to non-believers who "cannot be forced to participate in any religious ceremonies" (110-111). In the Polish circumstances such regulation acquires a special significance and in fact serves often as an excuse for spreading atheist propaganda (Chrypinski, 1981:246) through the secular state institutions. The authorities try as well to use the law against the rights of the Catholic majority, whose role in government has always been minimal under the communist rule.

Nevertheless, the influence of the Church and the Catholic population in the state affairs cannot be totally underestimated despite the lack of meaningful and guaranteed participation in the government decision-making. Within the broadly understood constitutional framework, the Church leaders, as well as the Catholic layman have tried to find

some room for independent political activity. Such attempts met with a varying degree of success.

Due to the lack of institutional regulation of their activity and the failure to organize a political party as early as 1946 (Szajkowski, 1983:10), the Catholic activists and intellectuals had to choose between compromise and defiance in their relationship with the PUWP. A compromise would have meant active participation in the official structures, and this in fact was an obvious sign of support for the atheistically oriented Marxist state. Defiance could have been interpreted by many Catholic Poles as a preservation of integrity and independence, but also, under the Polish circumstances, could result in effective isolation from any influence on public affairs, not mentioning hostile attitude of the government. The strong position of the Polish Catholic Church and the authority of its episcopate has been for many years the main source of support for many people who opposed the official communist ideology, not only the believers. The strength of the Church during this confrontation with the state, has been largely due to its flexible social strategy. This included such interpretation of the constitutional order that made use of many vague guarantees for which the basic law of Poland provided in 1952. Unlike the Hungarian Church, whose leadership adopted an openly anti-communist attitude during the 1956 uprising,

the Polish Church not only managed to survive, but also continued to increase its influence in society.

This situation so far, has had some effect on party policy. It contributed to the constitutional redefinition of the coalitional form of government (art. 3) to include formally the non-Marxists (non-party members) in the broader definition of the national front. Since the 1970s idea of the basic moral and political unity behind such "coalition" of social forces collapsed in 1980, it became increasingly difficult to find a new constitutional concept to replace it. It must be remembered that such concept of "sharing power", for example, with the Catholics, in the Polish circumstances has to conform with the leading role of the Communist party.

Due to the most recent political and social developments in Poland, the Polish United Workers Party had to de facto acknowledge the lasting phenomenon of ideological opposition, coming mainly from the Catholic majority, but also increasingly from other secular groups, emerging within the Solidarity movement. The lack of constitutional formula for conflict resolution has led to a situation where the communists engage in prolonged negotiations with the Church, trying to build new consensus on the existing constitutional foundation. The lack of constitutional guarantees is not as threatening to the Church as it is to the political opposition. While the episcopate has been able to preserve its power and expand its social role in spite of the difficult

legal situation, the opposition groups, even the Catholic, ones have neither the prestige nor the political resources to successfully preserve their autonomy within the existing structure of the Polish state.

The growing power of the Church in Poland is due to several political factors which strengthen its bargaining position. These include the authority and influence among the population, the efficient negotiation strategy and the favorable international situation. The last of these factors is most visibly expressed by the election of the Polish Cardinal Karol Wojtyla to the highest Vatican office. This has been, undeniably, the greatest outside influence on the Church-state relations during the last decade.³ The immediate result of these developments has been the intensification of diplomatic contact between Poland and the Vatican.

Denied legal recognition, but never avoiding active engagement in social and often also political life of the nation, the Church has not failed to exert its influence on the constitutional developments in Poland. Considered the only independent voice able to speak up for the Polish citizens in a state ruled by the communists, the episcopate has managed to influence the party policy. The political leadership of the country, over and over again, has had to come to terms with the phenomenon of a strong ideological opponent.

In the modern history of Church-state relations, several distinct periods can be distinguished. In this study the focus is primarily on the position of the Church within the Polish constitutional order. This position has shifted from that of a moderate support to the open criticism of the system. Most notably, in 1952, the new constitution was officially supported by the Church hierarchy, which at the time suffered severe administrative restrictions and feared further deterioration of its position after the exceptional agreement with the state authorities signed in 1950 (Szajkowski, 1983:15).

The 1956 "thaw" brought about another agreement with the state and led to the unprecedented bishops' call on the believers to take part in the upcoming Sejm elections in January 1957.

During the 1960s and the 1970s the Church frequently called on the government to respect the constitutional freedoms and the agreements signed by the representatives of the episcopate and the state. In 1976 the most significant protest of the Catholic Church and independent intellectuals took place. The revision of the Constitution, proposed by the PUWP on its I Plenum in December, 1975 included three important amendments: 1) the institutionalization of the leading role of the party; 2) the article referring to the "unbreakable alliance with the Soviet Union" as the founda-

tion of Polish foreign policy: 3) making the citizens rights dependent on the fulfillment of citizens' duties.⁴

As a result of Church's pressure the first of these amendments was put in a little milder form, defining the party as the leading force in society, not the state. The alliance with the Soviet Union was mentioned only as one of the principles of Polish foreign policy, the phrase "unbreakable" was dropped altogether. The last amendment was eventually rejected (Chrypinski, 1981:255). Official Polish constitutional scholars later acknowledged the fact of discarding "certain proposals which could have been understood as incompatible with the idea of sovereignty" (Sokolewicz, 1978:84).

In 1977 and 1978, the Church stepped up its demands for legal recognition and the creation of independent Catholic student and workers organizations which could participate in political life of the country. However, the party position remained stable on the issue of Church-state relations, based in fact on the conscious exclusion from the constitution of the special role which the Catholic Church actually plays in Poland (Szajkowski, 1983:53-60).

The constitutional regulation of the separation of Church and state in Poland cannot be considered only in the context of a conflict between a religious and a secular institution. In a Marxist-Leninist state we are dealing with a conflict between the state ideology, which is atheistic in

principle and any other independent expression of ideas that are perceived as a threat to the political status quo. The government sources in Poland have claimed that the modern Polish state should actively oppose all "clerical tendencies" in social and political life (Markiewicz, 1984:184). The same theme was repeated during the X Party Congress in 1986. Since in the Polish political system the state cannot be considered a neutral force any comparison with the secularization of public life in modern democracies does not appear correct in this case. In Poland, the process of evolution in Church-state relations has been dominated by an open struggle between two opposing ideologies, instead of a legal contest or a parliamentary constitutional debate.

A crucial factor in the PUWP traditional policy towards the Church in Poland has been a denial of the legal status that could match the real significance of this institution in the reality of Polish politics and society. The extra-constitutional regulation of religious institutions, as mentioned in art. 82 par.2 still appears to be the main foundation of Church-state relations in Poland. On the other hand, the necessity to institutionalize such relations led to the creation of some alternative frameworks for negotiation. The Joint Commission of the Representatives of the Government and the episcopate was created in 1957, but became an active body only in the 1970s. Now, it appears to be a lasting element of the Polish system.

The negotiations and agreements signed in 1950 and 1956, as well as frequent meetings between Church and government or party leaders, have sought to fill the gap left by the lack of legal regulation in these matters. The expanding social role of the Church could not be stopped despite administrative restrictions, and the authorities had to come to terms with this fact, albeit reluctantly (Markiewicz, 1984:230). Another area of activity which supplemented these developments was the increase in diplomatic contacts between the Polish government and the Vatican.

After the martial law declaration in Poland the role of the Church has undergone a significant transformation. The triangle of political and social forces that emerged during the 1980-81 in the form of the communist government on one side, and the Catholic Church and Solidarity, on the other, was altered dramatically. Since 1982 the authorities have left open only one feasible channel of communication with the independent groups in society - through the Church and its leadership.

As the only institution capable of mediation between the government and the society, the role of the episcopate has increased in the 1980s. The lack of corresponding legal improvements in the status of the Church is still in evidence, in spite of the renewed negotiations in this matter (Monticone, 1986:194). Despite the changing social reality

and lack of credibility, the communist regime in fact has continued its traditional policy throughout the 1980s.

The key elements of this policy are the support of pro-government "progressive Catholic groups" such as PAX, Polish Catholic Social Union (PZKS) and others, and the stress on the common participation of both non-believers and believers in the party program of socialist construction. The organization of the believers, therefore, is continuously regarded as a part of a larger, state controlled system of officially recognized associations. This situation creates a conflict with the Church which considers itself responsible for the activity of the people who identify themselves as Catholics. While the mediatory role of the Church has been accepted by the party as merely a necessary prerequisite to successful policy implementation, the organization of the believers by the communist authorities is now regarded as a lasting element of the Polish socialist state structure. Previously considered only a transitory phenomenon, the ideological differences have not "withered away". In order to maintain its ideological and political monopoly, the party has attempted to force the Church and the believers into a temporary legal framework, denying them lasting constitutional guarantees of participation in the nation's political life.

The Polish Constitution contains the articulation of certain systemic fundamentals which must be accepted by all

social and political forces willing to take part in the public activities of any kind. The lasting quality of these fundamentals stems from the rigid nature of the Marxist-Leninist doctrine which demands the acceptance of one particular theory of social development. The interpretation of this doctrine, however, by the party leadership is often forced into a compromise with the current policy requirements. The lack of clear guidelines in the state law and a presence of the ideological and geopolitical facts that are exempt from criticism or challenge, creates a necessity for frequent unofficial or extra-constitutional action. The search for a substitute modus vivendi is evident in the history of Church-state relations in Poland.

Instead of being regulated by the neutral law, religious affairs in a communist country become a domain of political and ideological struggle where the clergy and the believers on one side, and the state and party apparatus on the other, play the main roles. The thin line between the acceptance of the constitutional order and the open challenge to the communist system is walked constantly by Polish ideological and political opposition.

The Constitution and the Reality of Political Opposition in Communist Poland

Any analysis of political opposition under the communist system in Poland has led to a clear distinction

between the officially recognized expressions of disagreement with certain government policies, and various independent groups which choose to criticize the regime from the outside of state institutional framework. The confusion here may be caused by the fact that almost all governmental and independent actors claim that their freedom of action is guaranteed by the Constitution and other laws of the republic. New recognition given to the growing number of political, economic, and ideological trends within the Polish society by the government press in the late 1980s makes the situation even more puzzling. The Marxists-Leninist doctrine ceases to be the only, all encompassing argument of the regime in its propaganda campaign against the independent opposition.⁵

Poland, being a communist country, in its constitution recognizes only the existence of non-antagonistic class contradictions. The interests of the leading social force—the working class, the peasants and the progressive intelligentsia are supposed to be united in the common task of socialist construction. The revision of the basic law in 1976 was aimed at the development of socialist democracy through an institutional arrangement which corresponded to the interest of a united society, treated as an already accomplished fact.

The communist theory of democracy distinguishes between the indirect and direct forms of citizen participation in governing. The former is realized through the

elected representatives, in the Polish case: the Sejm and the People's Councils. The indirect form includes "the development of various structures outside the representative institutions: social consultations and control, and the self-government" (Sokolewicz, 1978:70). According to the Marxist scholars, the mature socialist state should be characterized by the growing importance of the direct democratic forms. This is also the important reason why they claim the superiority of the socialist democracy in comparison with the "bourgeois" one where the representative system of rule supposedly acts only in the name of the dominant exploitative social classes.

The leading role of the working class, according to this theory, eliminates the necessity for constant political bargaining among different interests. In a socialist society "the political power of the working people is realized not only through state structures and institutions, but through the whole system of a political organization of society whose particular elements remain in constant relationship and influence one another" (Sokolewicz, 1978:62). Such system of political and social organization is considered the proper representation of the working class interest. It is directed by the Communist party. In effect this situation leads to the social world which "appears to be perfectly planned and organized, leaving no room for new or simply different initiatives" (Cekalski & Litynski, 1987:17).

In spite of the dominant position of the communists in government, Poland is not officially considered a one-party state. The ideologically determined model of socio-political relations expressed by the Polish constitution provides for a three-party system.⁶ The parties are distinguished by their class representation. This situation, envisioned at first as a temporary alliance of the working class (the PUWP) with the peasants and the left-wing intellectuals, became a lasting element of the Polish political structure after the 1976 constitutional revision (art.3). Article 3 was subsequently amended in 1983 to include a slightly wider spectrum of groups and individuals in the newly created Movement for National Rebirth (PRON) which replaced the compromised Front of National Unity (FJN; 1976-80).

At the same time, the leading role of the working class was affirmed by adding paragraph 2 to art.4 which states that "the Polish People's Republic [...] expands the participation of workers in considering the matters of the state, society and economy, and strengthens the worker-peasant alliance". The recognition of the peasant role is yet another element of the Polish system which deserves attention and will be discussed later.

The Constitution defines the fundamental structure of political forces in Poland which are based on the class alliance and the leading role of the PUWP. The reference to the citizen participation in governing is, however, put in

very vague terms. Art. 5 par.2 declares that the state "ensures citizen participation in governing and supports the development of various forms of working people self-government". The freedom of organization and association (art.84), however, does not equal pluralism in politics and society. Paragraph 3 of art. 84 prohibits the creation of, and participation in organizations which are opposed to the political and social system of Poland. Since the party is guaranteed the leading role by the Constitution, it becomes the ultimate judge of what organization can potentially threaten the system.

Despite the idealized vision of a perfectly organized society, the struggle among conflicting political, social, and economic interests has always been hard to deny the reality in communist Poland. The opposition to the party programs, to government policies and to the political and socio-economic structure in general, has expressed itself from the outside of the regime as well as from the inside. The occurrence of periodic political and economic crises and lack of mechanisms for conflict regulation contributed highly to Poland's internal instability. The real situation contradicted the ideal picture of systematic socialist progress envisioned by the drafters of the 1952 Constitution.

From the beginnings of the communist rule in Poland, the non-communist political organizations were assigned a specific role in the revolutionary process of social change,

conceived by the party ideologues. Their existence was justified in class terms, and remained valid as long as the party could use such organizations as "transmission belts" for the implementation of its policies.

The disappearance of the pre-war Polish political parties by 1948 practically meant that the only real autonomous institution which survived in Poland was the Catholic Church. The subsequent challenge to the party rule has been either a derivative of the persistent strength of Catholicism in Poland or an unintended product of the communist system itself. The PUWP, in its struggle for political legitimation, created a system of social, political and legal organization which has been used against the party monopoly by the supporters of democratic reform, and evolutionary change towards greater pluralism. The constitutional foundation of the Polish state, in its present vague form, has served as a legal basis for almost all opposition activities and claims,⁷ originating both from the Catholic activists and the intellectuals of the political left.

The party interpretation of the "people rule", guaranteed by the Constitution, has not remained constant. Periodic relaxation in the practice of authoritarian control led usually to the more open constitutional debate over increased democratization, political pluralism, and greater citizen participation in government. Some independent groups, such as the Catholic organization "Znak", during

1956-76, attempted to influence the system through the constitutional means. For many years the small group of "Znak" deputies acted as virtually the only independent voice in the Polish Sejm, the body dominated by the PUWP and its allies. In a gesture of compromise towards the Church, one of the Catholic deputies became a member of the Council of state during the 1970s.⁸ In 1980, another Catholic politician, Jerzy Ozdowski was admitted to the post of deputy prime minister. The majority of independent intellectuals, however, remained critical of the official policies from the outside by organizing discussion clubs, petition drives, hunger strikes and other forms of protest, trying all the time to keep their action within the legal constitutional limits. Some prominent dissidents such as Jacek Kuron, a former party ideological expert - Leszek Kolakowski, and most recently Adam Schaff tried to exercise the right to independent criticism from within the party itself.

Several periods of intensified opposition activity in Poland have been characterized by the growing popular dissatisfaction with the methods of rule exercised by the party and state apparatus. The constitutional fundamentals have been rarely challenged.⁹ The focus of the opposition's activity did not remain on the validity of the socialist development as the main goal of state activity. What has been questioned, concerned rather the different interpretations of the word "socialism" and disagreement over the means

which should lead to the achievement of the social goals, promised by the communists.

The party leadership, despite constant challenge from the independent groups, has been highly reluctant to change the law or basic policy directions, even if these could be justified within the realm of the doctrine. Even in view of the permanent crisis of legitimation and the crumbling economy, the regime opted for temporary maneuvers and minor concessions, instead of meaningful reform. The important constitutional changes, if passed, were designed to serve as the future safety valve in order to prevent threats from the opposition, instead of incorporating the already existent political and social forces into the system by meaningful legal guarantees. This inflexibility of the communists in dealing with social and political instability can be considered the evidence for the systemic resistance to reform. So far, there has been no sufficient proof that the party would be willing to protect its ultimate task of socialist construction by explicitly allowing meaningful opposition in the Polish constitution. In the meantime, the basic law serves both the government and the unofficial opposition as the legal justification of their activity. The vague nature of the provisions and the lack of a real, independent tribunal which could produce authoritative judgments in the constitutional sphere help perpetuate political instability.

The overt actions of the Polish dissent groups and the growth of the independent social movements during the 1970s created a serious dilemma for the party leadership. The main voices among the opposition did not call for the overthrow of the constitutional order, but rather demanded necessary reforms in the political and economic practice of governing (Weydenthall, 1986:175-177). The most famous independent action proposing a comprehensive program of political reform was undertaken by the Experience and the Future Discussion Group. In 1979 it prepared a special report called: Poland Today. The State of the Republic (1981).

This text contained a detailed critique of the party and state organization as well as the practice of government in Poland of the late 1970s. The contributors who participated in this survey-type project were selected from people of various political orientations, including Communist party members. Instead of advocating the replacement of corrupt and inefficient rule of the PUWP, they proposed constitutional changes leading to more party control over government and the extension of democratic practices in the party and state structures. Some of these proposals are still important today, since they have resurfaced during the recent public debate over the political renewal and democratization in Poland.

Poland Today stated that the law in the country has become "a tool of political expediency" (20) and that "the

system's lack of self-regulatory mechanisms leads to the perpetuation of particularistic interests" (30). As a remedy to this situation a division of power was proposed, where "the party should act through the representative bodies and perform its control, supervisory, evaluative, and corrective functions in this way" (120). A greater constitutional role for the representative institutions (Sejm, People's Councils) was advocated.

Additionally, an electoral reform was proposed (121), and special emphasis was placed on the creation of an independent Administrative Tribunal to safeguard citizens' rights versus the state administration (125). Creation of an Ombudsman's office was also called for.¹⁰

All these changes were designed to reform the existing system and took for granted the fundamental principles of the political and socio-economic structure established by the 1952 Constitution. The authors, however, stressed the necessity "to respect the values of socialism in practice, such as the right to work, social help, access to culture and the right to express opinions" (116). The openness of political life was described as the prerequisite for any real reform (116). The issue of national sovereignty was also emphasized in connection with the ambiguous constitutional regulation of Poland's foreign policy principles (art.6) (103).

The increased opposition activity during the 1970s had its origin in the realization that a wide gap had been created between the constitutional promise of socialist democracy and the reality of political practice. It became all too visible that "the [1970s] decade has demonstrated the total inability of the present system to deal with economic and political problems in a rational way and to work out a long time strategy for development" (177).

The Experience and the Future Group urged immediate government action on legal, constitutional, and administrative reforms. They also stressed the importance of self-government and autonomy for different social groups. This problem was the focus of attention in the strategy of major opposition movements. Their leaders advocated legal, but autonomous self-organization of society, in order to reveal the government violations of its own laws.

The Committee for Workers' Defense (KOR), the Independent Trade Unions, and other unofficial organizations followed the strategy of petitions, appeals, protest letters and hunger strikes to force the authorities to obey the spirit of the state law. Their activity originated in 1976 when first efforts were made to reveal gross human rights violations of the regime, committed in result of workers' strikes.

A prominent Polish dissident Jacek Kuron remarked that "all democratic opposition [in Poland] must realize its

democratic aims of parliamentary democracy and national sovereignty by using peaceful means..., this movement must aim at reforming the system, not changing it" (Kuron, 1979:145). Also another opposition leader Adam Michnik stated clearly that "the road of evolution is the only way for the dissidents of East Europe" (Michnik, 1984).

This reformist and realistic attitude, it can be argued, is first of all a product of specific geopolitical or strategic conditions which exist in Poland. However, on the other hand, the origins of the contemporary Polish political opposition, excluding the Catholic Church as a special phenomenon, can be traced for the most part to the revisionist trends within the PUWP. Jacek Kuron, and other prominent party members, while rejecting the system in its totalitarian form, never wholly abandoned the ideology of the political left. At the same time, any opposition leader in Poland must be aware of the fact that the Polish society and the political culture in the country is constantly under-going change under the influence of the present system. The society as a whole seems willing to "accept a certain compromise with the people representing the interest of the Soviet Union in ruling the country" (Kuron, 1979:213).

From the above argument we can venture an opinion that the opposition leaders in Poland consider the PUWP regime as the representative of foreign interests. The constitutional order has been conceived as a legal basis for these inter-

ests. However, it also has, over the years acquired certain national characteristics making it easier for the population to identify with some goals of the socialist development. Especially this last factor may help the opposition accept certain fundamental provisions of the state law as the basis for compromise with the ruling party. The program of "social organization", designed to counter the official monopoly on public activities, created an alternative for independent interest articulation in a country governed by the communists.

This program became more feasible after the 1980 workers' revolt. The PUWP was faced with a dilemma of how to answer the demands of the working people who in fact desired the realization of the very same promises of democratization, civil rights, and the welfare state which the communists included in the 1952 Constitution.

Ironically, this refers also to the special role of the trade unions in the Polish political and economic system (art.85), as well as the increased participation of other citizens organizations in public affairs (art.84). The party program in the 1970s envisioned a perfectly organized structure where the party and state apparatus exercises total control over all organizations and social groups: trade unions, youth organizations, professional associations, etc.

Similarly, the freedom of the working people to use "printing presses, paper resources, public buildings,

communication systems, radio and all necessary equipment" (art.83 par.1) acquired a new meaning since the social organization created after August, 1980 became independent of state and party direct control. The Independent Trade Union solidarity attempted in 1981 to take advantage of the constitutionally guaranteed access to the mass media. This led to the severe conflict with the authorities (Karpinski, 1985:84).

Jan B. de Weydenthal in his recent study of the Polish Communist Party points out that in the 1980s "the explosion of activism [in society] was not conceived or directed against the existing system of government, its institutions and its leaders" (183). Nevertheless, there is little doubt that the party leadership despite their declaration of support for "democratization" felt threatened in their monopoly on power (187).

The Polish regime used two major arguments to justify the constitutionality of their actions aimed against the independent organizations, primarily the trade union Solidarity, during 1980-81. The party emphasized its leading role in the Polish society and demanded that all independent organizations openly acknowledge this fact. Secondly, the regime focused its attention on the revitalization of the easy manipulated pro-government trade unions and other quasi-independent social and political groups. The communist-controlled network of such organizations has been labelled

the "Third Force" (Trzecia Siła) by the Polish opposition (Cekalski & Litynski, 1987:35-40).

The United Peasant Party and the Democratic Alliance, along with some pro-communist Catholic groups such as PAX and neo-Znak,¹¹ as well as the officially recognized trade unions and youth organizations, constitute the core of the Third Force. Its existence, according to the communists, should make all other independent opposition in Poland unnecessary. The party has for a long time attempted to demonstrate that the "language of ideology", expressed also by some constitutional provisions, being completely out of touch with reality, might "assume an appearance of an actual opportunity" (50).

The events of the 1980s proved that only this officially recognized form of political opposition - the "Third Force" is permitted to function in the Polish legal system. After the declaration of martial law any expression of dissent within those organizations was eliminated to make them unanimously supportive of the Jaruzelski regime.¹²

The complex political composition of the contemporary political opposition in Poland makes it impossible to describe here all programs and attitudes towards the present constitutional order and the communist system as a whole. In the late 1970s a certain consensus has emerged among the Polish dissidents of various political orientations. Most of them consider it either unrealistic or unnecessary to change

the constitutional fundamentals of the present system. The future of contemporary political and economic reform and in consequence also the future of the opposition depend on the party leadership's willingness to negotiate with those independent groups. While the consensus on the status quo in Europe cannot be avoided, in such negotiations the scope of feasible political change is viewed differently by both sides. The chance for a compromise was already lost once in 1981 when the martial law was declared.

The governments willingness to accept the Catholic Church as the permanent mediator in its dealings with the opposition signifies an important policy change. A government spokesman hinted recently that the consultative role of even those people who are opposed to the communist system should be included in the future reform of decision-making processes on the highest levels of government.¹³ Also many suggestions appeared in the party press which indicates the possibility of allowing other political parties or even some real, for example Christian Democratic opposition in the Sejm.¹⁴

It has to be stressed, however, that the "liberalization" of party policies and the results of the official political debate in Poland have often fallen short of real change in the state law, the statutes, or finally the constitution itself. The recognition of the Polish own road to socialism often comes into conflict with the Marxist-

Leninist fundamentals without which the whole system would appear groundless. The party agricultural policy is the best example of how difficult it is to reconcile the Polish reality with the doctrine, especially when some constitutional amendments have to be made.

The Phenomenon of Private Farming in
the Constitution of Communist Poland

Any constitution of a Marxist-Leninist state places a special emphasis on the economic sphere. The important role of socio-economic relations, especially the relations of production, is dictated by the Marxist interpretation of the principles regulating the whole society. The state itself occupies a special position as the main agent of economic activity in the process of systemic transformation from capitalism to socialism, and later communism (Jarosz & Zawadzki, 1987:181).

While most constitutions of East bloc countries already proclaimed the full socialization of their economies, Yugoslavia and Poland still retain the varied pattern of economic activity. Jarosz & Zawadzki distinguish three types of property as indicated in the Polish constitution: social (socialist) property, (własność społeczna); smallholder property (własność drobnotowarowa) and capitalist property (własność kapitalistyczna) (183).

There are ten fundamental articles of the Polish Constitution which regulate the country's socio-economic structure, art.5 and arts.11-19. In 1976 three of them were changed. The direction of this change was mainly towards further affirmation of the privileged position granted to the socialized property.

Article 5, paragraph 2, declares that "the People's Republic of Poland strengthens the socialist property". It replaced former art.3 which in paragraph 4 described the state's duty "to restrict and eliminate the social classes living from the exploitation of workers and peasants". In the 1970s, this goal was judged not significant enough any more to merit a constitutional declaration (Sokolewicz, 1978:57).

Article 11 in paragraph 1, announces that the "socialist economic system, based on the socialized means of production and the socialist relations of production is the basis of the socio-economic structure [in Poland]". Marked before as art.7 this provision was less explicit in emphasizing the socialist nature of the economy. However, it stressed already that the state economic policy was to be based on a national plan.

The unique character of the Polish socio-economic structure is largely due to the abandonment of forced collectivisation in agriculture. No other constitution of any Soviet bloc country but the Polish one provides certain

guarantees for private farming. Article 15, paragraph 3, changed in 1976, guarantees state protection for the farms of the individual working peasants. Designated formerly as art. 10 it declared only the state protection against "capitalist exploitation in the villages" (paragraph 1). It also provided for the "voluntary [emphasis added] creation of peasant cooperatives". Paragraph 3 of the same article increased the role of the state in agriculture by the creation of state machine stations.

The abandonment of the Stalinist agricultural policy, which had not been completed before early 1970s, did not mean the departure from the main socio-economic goals, envisioned by the communist doctrine. New article 15, in paragraph 1, still emphasizes the aims of socialist transformation in the countryside. Similarly article 11 remains unchanged as the main directive of all economic activity in Poland.

The situation of Polish agriculture and the constitutional definition of private farmer's status in the communist system has been determined by the evolution of PUWP policy. This policy, despite frequent claims to the contrary, cannot for a longer period of time neglect the specific conditions of the Polish village. The traditional factors such as the century old peasant struggle for land and its equal distribution has played a major role here.

The 40-year experience of party agricultural policy has resulted in some important legal changes. Since the forced socialization of the farms can only lead to a total economic disaster, all the party can hope for is a gradual incorporation of individual or so-called family farms into the socialist system of production.

The present policy of increased tolerance towards private farming began in 1956 with the major shift in party policy. The abandonment of collectivisation campaign also paved the way for future improvement in the constitutional status of Polish individual farmers. The actual policy of the party and the state administration, however, during the 1960s and later during the 1970s, aimed mainly at the socialist transformation of the agriculture through gradual changes, endangering the position of private landholders (Korbonski, 1981:272-77)

The policies of the Gierek regime during the 1970s, designed to improve overall economic performance, including agricultural productivity, did not cause increased peasant confidence in the system. Open preference was still shown for the socialized sector while "highly productive individual farms were seen as an obstacle on the road to socialization" (288).

The continuation of party policy leading to the eventual socialization of Polish agriculture finds its constitutional justification in article 17. This provision

declares that "the state accepts [emphasis added] individual property in two forms: smallholder and capitalist ones and provides for the legal protection of thereof on the basis of the binding legislation". The Marxist scholars point out that this rule "entails the possibility or even duty of the statutes to regulate and limit capitalist property [...], its total liquidation is not ruled out". (Jarosz & Zawadzki, 1987:189). The classification of private farming poses certain problems for the Marxist legal experts. As we shall later observe, the capitalist label is totally unacceptable because of the doctrinal reasons of the Marxist-Leninist state. On the other hand, the classification of Polish farmers as smallholders may only be the first step towards the integration of individual farming into the socialist economy managed by the state.

It is not hard to notice the basic contradiction between the communist doctrine, implemented by the party in Poland, and the constitutional guarantees for the private farming. The latter are a product of the indigenous socio-economic conditions which do not seem to evolve the way the Marxist ideologues and the framers of the 1952 Constitution intended. Despite the fact that the precarious position of individual ownership in all economic spheres, not only the agriculture, is evident from the above argument, certain legal changes were eventually made in favor of the private farming. In 1983 the special status of Polish family farm

was acknowledged in the constitution by one significant amendment.

Article 15, paragraph 3, was changed to provide a guarantee for family farm as the lasting element of the Polish socio-economic structure. This amendment came about as a result of a prolonged debate in the Sejm and within the PUPP. The party and the government supposedly acted on the request from the United Peasant Party. Also the influence of the worker and peasant independent movements during 1980/81 cannot be overlooked here as a crucial factor in influencing party policy.¹⁵

Two recent tendencies in the constitutional regulation of Poland's private farming can be distinguished. One of them, formulated in 1976, is based on the premise that "the constitution confirms the existing social structure in order to transform it" (Sokolewicz, 1978:56). In the agricultural sphere this means that while the state accepts the role of private farming in the country's economy, it is not willing to abandon its ultimate goal of total socialist transformation of Polish village. The state enhances its position as the main agent of change and the representative of the working class and the nation as a whole.

The tendency to identify national interest of Poland with the socialist goals became very pronounced in the PUPP policy during the 1970s. It also found its reflection in the agricultural sphere. The temporary acceptance of the

status quo was accompanied by a long-run plan to reduce the agriculture to the role of a relatively marginal sector in a mostly socialized economy (Korbonski, 1981:277).

Under the pressure of the social unrest in 1980-81 and the deteriorating economic conditions in agricultural production, the party approach to the constitutional position of private farming was altered. This change was eventually reflected in the constitutional amendment (art.15 par.3). Also the whole interpretation of property ownership in the countryside and the relations of production on the farms had to be changed as well, in order to suit the demands of the doctrine.

A comprehensive analysis of this new approach to the private farming in the Polish socio-economic structure is presented by a Polish legal scholar Kazimierz Strozczyk (1987). Strozczyk attempts to reconcile the new legal status of a family farm, expressed by the amended art.15 par.3 of the Constitution, with the Marxist-Leninist doctrine and those provisions of the state law which adhere to the fundamentals of the communist system in Poland. He emphasizes the difference between a family farm and a private farm. The former term refers specifically to an enterprise which is run exclusively by members of a peasant family. Farms which employ outside help, according to Strozczyk, are excluded from state protection.

The Polish scholar also points out that farm land and means of production in the countryside can, under certain circumstances be considered "personal property" of a peasant family, (art. 132 par. 2 of the Polish Civil Code) (72-73). Also in this case farmers would be additionally protected by art.18 of the Constitution. This article declares that "Polish Peoples' Republic guarantees complete protection and a right to inheritance of the personal property of the citizens". Strozczyk refers here mainly to smaller holdings, while most private farms are still considered "individual property", protected constitutionally as far as they are supported solely by the work of single family members (72-74). The size of such farm, he suggests, should only be determined by economic factors. The administrative norms set by the 1944 Land Reform Act still prohibit private ownership of larger farms. Strozczyk argues that the legal significance of this "outdated", but still binding law, is offset by the reality. Holdings in excess of fifteen hectares constitute only about six percent of all individual farms in Poland (75).

The author of this article acknowledges that under the present state law the socialized property is assured a prominent position in Poland's socio-economic structure. This concerns the special protection granted the state farms (art.12 par.1) and peasant cooperatives (art.16 and art.15 par.4). Strozczyk also stresses that "the family farm cannot

be considered a part of the socialist economic system under article 11 of the constitution"(75).

Nevertheless, the scholar proceeds to argue that since family farms are based solely on the work of family members, not hired labor force, this very fact is the "basic explanation for the principle of lasting guarantees [granted to this form of ownership] in the Polish socio-economic structure"(76). The new agricultural policy in the view of the constitutional amendment is supposed to be directed towards providing adequate protection only to this particular form of ownership. Strozczyk adds that it should lead to granting family farm equal legal status, compatible to one possessed by the nationalized and cooperative sectors.

Since the advanced process of socialization of production in Polish villages is a recognized fact, the scholar suggests that family farming in Poland "has lost the characteristics of private economy"(78). This argument signifies an attempt on the part of Marxist legal scholars in Poland to justify the continued existence of an independent economic sector in a communist country. It aims at making it appear as a permanent feature of the socialist economy which coexists with the process of socio-economic transformation instead of obstructing it.

Whatever the doctrinal argument may be in this case, some independent scholars also point out that the overall process of socialist transformation in the Polish agriculture

has had strong influence on the traditional value system of the peasant. Already in the 1970s, "the regime found itself in the position to socialize agriculture without antagonizing the majority of the villagers" (Korbinski, 1981:290).

In the 1980s, the percentage of village population in Poland is still significant.¹⁶ Agriculture remains a vital part of the country's economy. However, the proposals for future constitutional change towards "greater equalization among different sectors in agriculture" (Strozczyk, 1987:79) should be viewed in the context of the changing social situation. It entails the escape of younger generation from the countryside, continuous fragmentation of land etc. This, in combination with the changing value system, makes way for faster integration of family farms into the socialist economy. Judging from the poor economic performance of the Polish agriculture since 1977, this process is not only difficult to justify in terms of the party doctrine which cannot be supported by even lower productivity of the socialized sector. The new approach to family farming in the 1980s so far has not brought visible improvements in the Polish agriculture either.¹⁷

The problem of incompatibility between the private economy, which must struggle for survival, and the legal preference given to the socialized or state-owned sector in Poland seems very much a permanent feature of the system despite the recent attempts at providing more clear constitu-

tional regulation in this area. The program of socialist transformation, however, which is reflected in the Constitution, cannot be viewed in isolation from the specific Polish political and socio-economic conditions.

The PUWP leadership has tried several times to reconcile the Marxist-Leninist ideology with the practice of governing the country where certain powerful social factors constantly resist change. In order to overcome these difficulties, the legal framework conceived by the communist regime, from the beginning was intended either to exclude or coopt the hostile social, political and economic groups or classes, as the Marxists prefer to call them. The resistance to the system has for a long time been based on the claim that the proposed changes in politics and economy are incompatible with the Polish conditions.¹⁸

While the policy of exclusion and denial of legal status was conducted against certain religious and economic groups, especially during the Stalinist period, at the same time, the whole concept of legal political opposition as a "free play of political forces" was eliminated. Until 1956 despite some protection provided by art.10 of the Constitution and the 1944 Land Reform Act, which promised land distribution to private peasants, the campaign of de-facto liquidating the privately owned land was under way in Poland.

Before the 1980 workers' revolt, the PUWP managed to avoid detailed constitutional regulation of the state-Church

relations and the status of many newly emerged independent social groups. While the peasants succeeded in acquiring some sort of a legal guarantee in 1983, the Jaruzelski regime has opted once again to find a substitute for reform in the other areas.

The 1982 and 1983 constitutional changes (the creation of two Tribunals and the PRON) are technically designed to safeguard the law and protect the citizens from the violations on the part of the state administration. However, these moves also signify the new attempts to revitalize the "Third Force", preventing in this way any independent interpretation of the constitutional freedoms by the opposition.

The gains of the private farmers also have to be analyzed in the context of long term policy of the party. The exclusion of non-family farms from constitutional protection raise certain doubts as to the actual intentions of the party leadership. The preference for the socialized sector continues to determine the party economic policy and the main goal for today appears to be greater dependency of the family farms on the state administration, instead of allowing it to become a core of a revitalized and independent agricultural sector. Recent renewal of talks with the Church on private funding for Polish agriculture provides, however, at least some hope for the future.

Since 1956, when the Stalinist model of socio-economic transformation was abandoned in Poland, we can notice a tendency in the Polish constitutional practice towards a national road to socialism. The Marxist scholars now openly admit the existence of former "wrong" tendencies towards "the uniformization of structural solutions, modelled on the Soviet 1936 Constitution" during the 1950s. (Jarosz & Zawadzki, 1987:88). These authors also point out that "the briefness and the high degree of abstraction in the Polish Constitution created a situation where even profound systemic changes, including those concerning the functioning of the state organs, could be conducted to a large extent outside of the constitution, without introducing amendments in the text itself" (92).

This situation lasted until 1976 when Poland was declared the nationally united state at the stage of building socialism. The national character of the Polish state found its expression in the constitutional revision. It was intended to project an image of political and moral unity. In such a state there was no room not only for political opposition, but also for an extended role of the Church as an independent spokesman in social affairs, not merely a benevolent ally of the regime. The existence of basic agreement between the state and the Catholic Church was simply taken for granted (Chrypinski, 1981:256). "The all-national state of the working people" was declared a

"continuation of the previous state based on the dictatorship of the proletariat" (Sokolewicz, 1978:49). It was backed by a claim that "the sovereign Polish state can be strong only as a socialist state" (51). In consequence the national interest of the Poles became identified with that of the working class (40-41). This denial of ideological and socio-economic conflict was accompanied by a new expression of national symbolism. Art.103, paragraph 3, was added to the Constitution, officially recognizing the original Polish national anthem. Additional protection for the national symbols was included in the new art. 104.

The evolution towards a national version of Polish socialism continues throughout the 1980s. On one hand, we have to acknowledge that certain specific domestic conditions are given greater consideration by the party leadership. But, it is too early to claim that the Marxist-Leninist system in Poland has finally come to terms with the independent Church, the political opposition or even family farming. So far the constitutional changes do not indicate any radical departure from the previous methods of only temporary political regulation of problem areas in these basic spheres.

The contemporary situation of the Polish socialist system can also be looked upon from another perspective. Cekalski and Litynski argue that "the nationalization of socialism means not only the reconciliation with the national peculiarities, but also a deeper entrenchment of the system

in society, precisely due to the rejection of the most striking features of the anti-national symbolism" (58).

A more optimistic outlook on the systemic evolution in Poland may be based on the observation that "neither private agriculture, nor tolerance of the Church's role [...] nor freedom of foreign travel (art.89)¹⁹, nor the support for private handicraft and franchise in commerce belong to the typical features of the [communist] system. [These features] make it more susceptible to future evolution" (Najder, 1982 :76).

At present, it is very difficult to determine the future of Polish constitutional changes and whether or not the state law will slowly evolve away from the fundamentals of the Marxist-Leninist doctrine. Nevertheless, it must be acknowledged that since the system of communist rule has existed in the country already for about 45 years, influencing the value systems and the reality of socio-economic conditions, the position of the Church, independent opposition or private agriculture in Poland in the foreseeable future may never approach legal status comparable with Western democratic systems.

NOTES

1. See Markiewicz (1984) for a detailed discussion of the role of minority religious in contemporary Poland.
2. Since 1956, the Polish government has established a practice of regular meetings between its representatives and the delegates of the episcopate.
3. The constitutional focus of this study does not allow more space for discussion of the Pope, John Paul II's influence on the Church-state relations in Poland.
4. This proposal sounds in fact like an echo of the articles 6 and 7 par. 1 of the 1935 Constitution.
5. See recent articles in the official PUWP weekly Polityka, for example: Passent, D., "Centryści podnoszą głowę", Polityka, No 44, 1987.
6. The Polish United Workers' Party, The Peasant Party and the Democratic Alliance. Similar system consisting of two or more allied parties exists in six other communist countries: Czechoslovakia, GDR, Bulgaria, North Korea Vietnam, and the People's Republic of China.
7. Some more radical organizations such as the Confederation for Independent Poland (Konfederacja Polski Niepodległej-KPN) call for full political independence and totally reject the present system.
8. Jerzy Zawieyski. He was one of the most prominent post-war Catholic politicians in Poland. Unable to withstand political pressure from the communists he withdrew from government in late 1970s. Later committed suicide.
9. For detailed documentation on Polish opposition see Raina (1981).
10. The Ombudsman's office was actually created in Poland in 1987.
11. After the split within the "Znak" group in the mid-1970s the pro-communist faction continued its activities under the same name. It was labeled "neo-Znak" by the independent Catholic activists who resigned from participation in government.
12. For example the pro-Solidarity leadership of PAX association was purged in 1982.

13. See for example Kaminski A. "Dialog Posredni". In Polityka, No. 31, 1988.
14. Also independent Catholic activists have won over the recent years some advisory role in the socio-economic sphere, exercised through the Social Council of the Polish Primate.
15. For discussions on contemporary agricultural issues and reform see Bedkowski, L. "Odcienie zieleni", Polityka. No. 12, 1988.
16. Polish village population in 1975 constituted 44.3 percent of the total in 1987 - 39.5 percent. (Rocznik Statystyczny 1987, Warszawa, Główny Urząd Statystyczny).
17. The 1986 data shows only slight improvement in grain production in comparison with the average output during 1976-1980. The total number of farm animals (cattle, pigs, sheep and horses) actually declined by more than 10 percent. (See Ibid.)
18. See Rybicki et al. (1977) Sejm Ustawodawczy Rzeczpospolitej Polskiej 1947-52, for the information on political and economic influences during the constitutional debate in the 1950s.
19. Due to the fact that Poland has had for many years the most liberal passport policy in the Soviet bloc, the 1976 revision of the Constitution provided for special protection by the country's diplomatic and consular service, to which the Polish citizens residing abroad are entitled (art. 89).

CHAPTER VI

CONCLUSION

From the standpoint of a contemporary observer, the Constitution of the People's Republic of Poland may seem to play a rather marginal role in the protracted political and socio-economic crisis, besieging the country during the 1980s. A persistent question remains, however, what the future holds for the nation and the state. The 1952 political and economic structure could appear very much outdated at present, but the fundamental principles of the system, which are contained in it cannot be disposed with, due to Poland's crucial position in the Soviet bloc.

A closer look at the Polish constitutional tradition may allow us to see two important tendencies in the development of the country's political structure. Since 1918 (the year of regaining independence), the evolution of the constitutional order has been either nation-oriented or state-oriented.

One important external factor, the location of Poland in Europe between Russia and Germany, has always been influencing politics in that country. Associated with this is the strong feeling of national identity which helped the Poles survive the period of foreign rule throughout the 19th century.

The nation-oriented program of Roman Dmowski saw the strength of Poland in building a political system where the ethnic Poles would dominate all spheres of life. He hoped that through a parliamentary victory his party would be able to gain sufficient majority and proceed to establish a state for, and ruled by, the ethnic Poles who only by strengthening the national ties supposedly were able to resist foreign threat. The 1921 Constitution was not the ideal solution for Dmowski, but it could be used as a means to an end.

A more idealistic plan was envisioned by Josef Pilsudski. The 1935 Constitution reflected his state-oriented attitude. Even after the collapse of his federalist plans in Eastern and Central Europe, Pilsudski looked at the strong, multinational Polish state as a necessary prerequisite for the country's lasting independence as well as the national survival. The state organization, according to his followers, was to be based on the authoritarian methods of rule, with the parliament (Sejm) remaining in the shadow of a strong president. The theory of solidarity between the citizens and the state along with the syndicalist system of participation were meant to serve the common good—a strong Polish state.

After World War II the internal and external variables influencing the new emerging political system were altered dramatically. Poland found itself in the sphere of influence of just one of its two powerful, historical neighbors — the

soviet Union. This type of foreign domination resulted not only in political influence, but brought with itself an ideology which was to determine the future of the state structure and the whole society.

During the last 44 years of the communist rule the concepts of the Polish nation and the Polish state had to be reconciled with the demands of the Marxist-Leninist doctrine. The Communist party in its propaganda chose to identify the new ideology with the "progressive" tendencies in the history of the Polish nation. The whole preamble to the 1952 Constitution is in fact devoted to this idea. At the same time, the preamble stresses that the Polish state of people's democracy represents primarily not the nation as such, but "the interest and desires of the widest masses of people".

During the period of open political crisis, however, the party had to realize that neither the nation as a whole nor the "wide masses of the working people" are willing to grant legitimacy to the foreign imposed and ideologically alien regime. The dismal record of economic performance and the failure to realize promises of an equal, egalitarian society made it even more difficult for the communists to maintain the minimum level of social mobilization and support. Then, it was the concept of a sovereign Polish state which could be used as a rallying ground for the people who strongly resisted all foreign (Soviet) elements in the present system.

In 1956-57, the party first secretary Gomulka managed to convince the Polish people that the state, ruled by the party he represented was the only alternative to the Soviet occupation. In 1976, however, the PUWP returned to the concept of the unity of interest that supposedly characterized the working class (perceived in the Marxist-Leninist terms), and the Polish nation as a whole. In the 1970s, the values of socialism were widely accepted in Polish society. Nevertheless, the people did not believe that these were being applied by the regime (Mason, 1985:74). The social unrest during the 1980s brought about profound changes in the Polish society's value system, which was marked by the drastic decline of support for socialism (236). The Jaruzelski government, mainly by the way of legal and constitutional reforms, chose to emphasize strong state organization that according to the communists on December 13, 1981 was delivered from anarchy and a threat to its sovereignty.

The role of constitution in the communist system of Poland can be viewed differently from the standpoint of the ruling party and its ideology than from the position of the independent social movements within the society. Providing legitimacy appears to be only one, by no means the most important, function of the charter. According to the Marxist-Leninist doctrine, the laws of historical determinism and the socio-economic development derived from them, stand

above any constitutional regulation. The party draws legitimacy from the principle of its leading role and the working people's consensus mandated by these laws.

The charter as such, constitutes a specific fundamental and general programmatic platform on which the future of the country's development is to be built. The party maintains its position as the leading social force, determining the future of state and national development. It manages to exercise its role via the "transmission belts" of the other two political parties and the network of controlled organizations, without necessarily monopolizing all social activity in an official one-party structure.

In Poland, the programmatic function of the constitution has for many years overshadowed its legal significance. At first, the Stalinist doctrine of people's democracy, then the idea of a nation-oriented socialist state, came to determine the direction of constitutional development. By identifying the function of the state organization with the realization of their political and socio-economic goals the Polish communists managed to write their ideology into law.

The new "socialist law" was meant to be defined according to the doctrinal standards in disregard to any independent verification by a constitutional tribunal or any other judicial institution. The passing of the new constitutional responsibility laws in the early 1980s served the purpose of emphasizing a different approach to legality by

the Jaruzelski regime. There is little evidence, however, that the practical significance of the new institutions (the Constitutional Tribunal, the Tribunal of State) is able to alter the actual process of decision-making within the state and party apparatus, which rarely takes constitutional constraints into consideration.

Another function of the constitution in communist Poland - education or socialization of the people has largely proved a failure, especially during recent years. In 1975-76, during the widespread protests against the authoritative constitutional amendments, there was some attachment still in evidence to the charter as a symbol of national sovereignty (Rakowska-Harmstone et al, 1984:68). In the 1980s, however, there has been growing dissatisfaction with the system and even the very socialist foundations which are expressed by the programmatic articles of the Constitution are now distrusted or openly rejected by the large segments of the public opinion (Mason, 1985:228, 233-248). While any plausible alternatives are absent due to the geopolitical situation of Poland, apathy and discontent become widespread. The communist authorities on their part, engage in futile search for means to rejuvenate the political and socio-economic system, still based on the outdated Stalinist constitutional model.

It may be argued that at present time the 1952 Constitution seems to be a rather deficient symbol than a

real basis of the communist hold on power in Poland. The Polish government leaders more often cite the country's position in the bloc as its "raison d'etat" and the main reason why the nation should come to terms with the program of reforms led by the PUWP.

Under such circumstances the future of the constitution remains uncertain. The development of the basic law could evolve in at least two different directions. The decline of official ideology, which according to Huntington (1970) is a characteristic of "consolidated one-party systems" is already a fact. Since 1982, the Jaruzelski regime opted for the constitutional status quo with only minor changes designed to strengthen the position of the authorities and their image as a "law abiding" regime, rather than revising the whole basic law.

Among the Polish legal community, however, there are some voices which interpret Jaruzelski's intentions as a real desire for more fundamental constitutional reforms. Kubiak (1987) analyzes the programmatic articles of the 1952 Constitution from the standpoint of their legal and ideological significance. According to him, the drafters of the Constitution intended to give the programmatic provisions a real legal meaning, not only "an interpretative directive" of the system's development. Kubiak adds that "the acknowledgment of the 1952 Constitution as primarily a legal document is possible in spite of its widely known shortcomings" (29).

The interpretation of the constitution as a legal document is pointing out in the direction of the future development towards the goals of "socialist democracy" and a "greater realization of citizen's freedoms and rights" in Poland. Kubiak seems to agree that this should be the basis for the future constitutional revision supervised by the Constitutional Tribunal. He does not challenge the fundamentals of the system but he is aware of the fact that some "regressive" legislation has already been passed in the recent years thus putting in doubt the whole idea of an evolutionary change in the constitutional practice towards greater "social self-rule", a phenomenon apparently in evidence since 1981. He points out the examples of such backward legislation: passing the new higher education law, and the 1985 law on the extraordinary legal responsibility.

Whether constitutional changes will be kept in check, under the present status quo or the Jaruzelski regime allows some more profound revision of the basic law, in both cases it appears unlikely that the fundamentals of the communist system will be altered in any meaningful way. A program of "socialist renewal" may replace the outdated idea of people's democracy and the socialist national state, which are heavily indebted to the Soviet model.

The decline of ideology, however, makes it more difficult for the PUWP to maintain its leading position in society. Its function may eventually be reduced to that of a

recruitment pool only, for the purpose of filling the governmental and administrative posts at the top of the hierarchy with the loyal individuals. Non-communists already are being accepted to some lesser advisory or consultative positions in the decision-making process.

The growing importance of the indigenous elements in the Polish political and socio-economic structure is evident even in the contemporary version of the constitution. This may pose a much greater problem for the Polish communists in the future. Unwilling to acknowledge the legal existence of the independent Catholic Church and the autonomous social groups in the narrowly conceived constitutional framework, the PUWP leaders of Poland may be forced to look for a more lasting modus vivendi, guaranteed by a political agreement instead of any new provisions in the basic law.

So far the Jaruzelski regime has offered only some consultative voice in government affairs to the opposition. Mindful of the 1981 martial law that violated the 1980 "social accords" signed at Gdahsk, Szczecin and Jastrzabie, the independent activists, in their majority, remain suspicious of the communists' intentions and most likely will not agree to any future compromise without first securing meaningful legal guarantees.

The 1952 Constitution which nominally is the basic law of a sovereign state, also can be perceived as a symbol of a compromised Stalinist state organization, which was only

marginally affected by the 1976 revision. The Polish political culture with its "non-democratic, elitist, egalitarian and particularistic values" (Rakowska-Harmstone et al., 1984:64) may prove to be a tough barrier against a more complex reform of the system in addition to all the systemic and external variables mentioned above. The distrust of the communists who at present are the only force capable of instituting political reforms, coincides with the popular attachment to the legal status quo which gives the state a special responsibility for nation's welfare. Most likely the next decade will show whether the changes in belief and value systems that occurred during the 1980s, in combination with the active intellectuals', workers', and peasant pressure groups can push the communist system in Poland in the direction of democratic constitutional reform. It all ultimately depends on the international climate in Eastern Europe as a whole. It remains to be seen if the Polish developments can be reconciled with Gorbachev's ideas of "democratization" and "self-determination" of all socialist [emphasis added] members of the bloc.

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A P P E N D I X O N E

APPENDIX ONE

CONSTITUTIONAL DEVELOPMENT IN EASTERN EUROPE

Country	Constitution		
	Modified Pre-War	Intermediate	Stalinist
Bulgaria	1944 (1897)	1947	----
Hungary	1946	----	1949
Rumania	1944 (1923)	----	1952
Poland	1947 (1921)	----	1952
Czechoslovakia	1945 (1920)	1948	1960

Source: Jedruch, J. (1982) Constitutions, Elections and Legislatures of Poland 1493-1977. A Guide to Their History. Washington D.C.: University Press of America Inc. p.404.

A P P E N D I X T W O

APPENDIX TWONUMBER OF SEJM LEGISLATIVE ACTS PASSED AND COUNCIL OF STATE
DECREES CONFIRMED (1952-1985)

	TERM	LEGISLATION	DECREES
I	(1952-1956)	42	161
II	(1957-1961)	174	13
III	(1961-1965)	93	1
IV	(1965-1968)	60	1
V	(1969-1972)	36	-
VI	(1972-1976)	103	11
VII	(3/21,1976 - 2/28,1978)	34	3
VII	(March 1980-August 1985)	203	6

Source: Jarosz, Z. and Zawadzki, S. (1987) Prawo Konstytucyjne. Warsaw: Państwowe Wydawnictwo Naukowe. p. 335

A P P E N D I X T H R E E

APPENDIX THREE

CLASS COMPOSITION OF THE POLISH SOCIETY

Classes and Social Strata	1938	1983
	percent	
Landowners	0.5	-
Bourgeois	2.0	-
Working Class	29.0	46.7
Peasantry	52.0	24.9
White Collar Workers	5.5	23.6
Petty Bourgeois	11.0	4.8
Total	100.0	100.0

Source: Jarosz, Z. and Zawadzki, S. (1987) Prawo Konstytucyjne. Warsaw: Państwowe Wydawnictwo Naukowe. p.105.

A P P E N D I X F O U R

APPENDIX FOURMAJOR CONSTITUTIONAL DEVELOPMENTS IN THE PEOPLE'S REPUBLIC OF
POLAND 1952-1988

Date	Amendment/Revision
1952	Constitution passed
1957	The Supreme Chamber of Control (Najwyższa Izba Kontroli - NIK) introduced as a state organ subordinated to the Sejm
1960	The number of Sejm deputies set at 460. (Formerly one deputy per 60,000 population was elected)
1961	Council of State enlarged from nine to eleven members
1972, 1973 and 1975	Changes pertaining to the reform of territorial division and the state administration.
1976	Constitutional revision * leading role of the PUPP in society * The Supreme Chamber of Control (NIK) subordinated to the Council of Ministers

APPENDIX FOUR cont.MAJOR CONSTITUTIONAL DEVELOPMENTS IN THE PEOPLE'S REPUBLIC OF
POLAND

Date	Amendment/Revision
1976	<p>Constitutional revision (cont.)</p> <ul style="list-style-type: none"> * Poland declared a socialist state of the working people * development of socialist democracy * Sejm empowered to pass declarations about the general direction of socio-economic development * foreign policy directives: friendship with the USSR * constitutionalisation of the Front of National Unity (Front Jedności Narodu - FJN)
1980	<p>The Supreme Chamber of Control (NIK) returned under the Sejm supervision</p>
1982	<p>Constitutional Tribunal, Tribunal of State introduced</p>

APPENDIX FOUR cont.

MAJOR CONSTITUTIONAL DEVELOPMENTS IN THE PEOPLE'S REPUBLIC OF POLAND

Date	Amendment/Revision
1983	<p>Replacement of the Front of National Unity (FJN) with the Patriotic Movement for National Rebirth (Patriotyczny Ruch Odrodzenia Narodowego - PRON).</p> <p>Working class role confirmed as the main social force in the political system.</p> <p>State of emergency law introduced.</p> <p>Family farm declared a lasting element of the socialist economy in Poland.</p>
1987	<p>Referendum included in the text as an expression of the "working people's will".</p>
1988	<p>Fiscal autonomy for provincial People's Councils.</p>

APPROVAL SHEET

The thesis submitted by Tomasz Inglot has been read and approved by the following committee:

Dr. Vasyl Markus, Director
Professor, Political Science, Loyola University

Dr. Allan L. Larson
Professor, Political Science, Loyola University

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the thesis is now given final approval by the Committee with reference to content and form.

The thesis is therefore accepted in partial fulfillment of the requirements for the degree of
Master of Arts...

Nov. 21, 1988
Date

Vasyl Markus
Director's Signature